

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1828 of 1988.

Decided on 23.3.1990.

Madan Mohan Sinha

.....Applicant.

Vs.

1. Union of India through:

i) Additional Secretary,
Department of Pension & Pensioners Welfare
New Delhi.

ii) Law Secretary, Department of Legal Affairs,
Ministry of Law & Justice,
New Delhi.

....Respondents.

For the Applicant - Shri R.L. Tandon, Advocate.

For the Respondents - Shri P.H. Ramchandani, Sr. Advocate.

B.S. Sekhon:

The short yet a fairly hotly debated question falling for adjudication in the instant Application is as to whether or not the Applicant who superannuated on March 31, 1988 is entitled to benefit of added years of qualifying service for superannuation pension under Rule 30 of the Central Civil Service (Pension) Rules, 1972 (for short the 'Pension Rules').

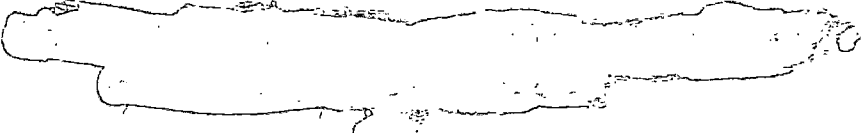
2. Skipping superfluities, Applicant passed LL.B.

in 1983 and was enrolled as a Legal Practitioner on January 4, 1954. After a stint of for more than two years at the Bar, he was appointed as Legal Inspector in the office of Assistant Custodian/Managing Officer, Aligarh/Etah in the Ministry of Rehabilitation on 28.12.1956. He has been holding different posts like Senior Inspector, Legal Clerk, Tabulation Assistant, U.D.C. till February 29, 1968. He applied for the post of Asstt. (Legal) in the Department of Legal Affairs, Ministry of Law and Justice. After having been /on March 1, 1968 and selected by the U.P.S.C., he joined the post of Asstt. (Legal) /

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continued to hold the same till January 20, 1978. During the period 21.1.1978 to 31.1.1987, he held the post of Superintendent (Legal), after earning promotion to the said post. He held the post of Asstt. Legal Adviser in the aforesaid Department from 1.9.1987 to 31.3.1988 - the date of his superannuation. The following eligibility qualifications for the post of Assistant (Legal) were prescribed vide column 7 of the Ministry of Law and Justice (Department of Legal Affairs) Group 'B' Posts Recruitment Rules, 1965 (for short the 'Rules'):-

- (1) Degree in law of a recognised University or equivalent.
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- at least
- (2) Should have 3 years experience in the Legal Department of a State.

OR

Should be a Central Government servant who has had 3 years experience in Legal Affairs.

OR

Should be a qualified Legal practitioner.

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The expression 'qualified legal practitioner' has been defined to mean an advocate or a pleader who has practised at least 2 as such for 7 years or an Attorney of the High Court of Bombay or Calcutta who has practised as such for at least 2 years. By virtue of amendment made to the Rules on 27th April, 1985, a new column as column 6(a) with the following heading was inserted in schedule to the Rules:-

"Whether benefits of added years of service admissible under Rule 30 of the Central Civil Services (Pension) Rules, 1972".

the
Expression 'No.' was indicated below this column at / time

of the aforesaid amendment. This column was subsequently amended vide Ministry of Law and Justice (Department of Legal Affairs) Group 'B' Posts Recruitment (Amendment) Rules, 1987. Against the post of Assistant Legal, the following was substituted in column 6(a):-

"Yes, to direct recruits only."

Applicant approached the superior authorities in his Department as also in the Department of Pension and Pensioners' Welfare. His representations for getting the needful did not yield any fruitful results. Vide Memo. dated 29.12.1987, (Annexure-C), Applicant was advised that his request had been considered in detail in consultation with the Department of Pension and Pensioners' Welfare. It was regretted that his request for benefit for added years of service had not been acceded to. Vide Memo. dated August 22, 1988, (Annexure-L), Applicant was again told that his request cannot be acceded to. The reason for rejecting the Applicant's request specified in Annexure-L is that Applicant had already got the benefit of services rendered before joining as Asstt. (Legal).

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3. Applicant has impugned Annexures C and L of challenge. The salient grounds/are that the decisions communicated vide impugned Memos. are arbitrary, against the recommendations of the Third Pay Commission and in violation of Rule 30 of the Pension Rules, which is applicable to post March 31, 1960 entrants to Govt. service. In support of his claim the Applicant has also averred that he was appointed to the post of Assistant (Legal) as a direct recruit pursuant to the recommendations of the U.P.S.C., he fulfilled the 'selection criteria'.

His case is fully covered under order dated 6.4.1987 of the Department of Pension and Pensioners Welfare. Applicant has also referred to the opinions rendered by the Department of Legal Affairs upholding his claim.

4. Respondents defence as disclosed in the counter is that according the benefit of added years of service in a case like the petitioner's would mean giving in addition to double benefit i.e./ counting his earlier service under the Govt. of India rendered in the post of Assistant (Legal). The same would be contrary to the object and intention as also scope of Rule 30 of the Pension Rules. The benefit of the amendment to the rules made on October 10, 1987 is available only to those persons who are appointed to the post after the said date. The Respondents have further averred that the Applicant was not appointed from the 'open market' as this expression refers to only those who are appointed from outside the Govt. Respondents have also referred to Rule 12-A of Indian Legal Service Rules in support of their stand.

5. Applicant has more-or-less reiterated his case in the rejoinder, adding that the expression 'open market' logically refers to 'competitive market' where the Govt. servants and outsiders are called for recruitment test.

6. We have heard fairly elaborated arguments addressed by the learned counsel for the parties in support of their respective cases and have given our earnest and thoughtful consideration to the matter.

7. It would appear to be profitable to mention at the very outset the provisions of Rule 30 of the Pension Rules, amendments made thereto as also the position

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obtaining prior to the commencement of the Pension Rules.
Prior to coming into force the Pension Rules, the question
adding
of/a certain period to the qualifying service for
superannuation pension was regulated by C.S.R. 404-B.
Rule 404-B reads thus:-

"404-B - An officer appointed to a service or post may 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 exceeds twenty five years or a period of five years, whichever is least, if the service or post is one:-

- (a) for which post graduate research or specialist qualification, or experience in scientific, technological or professional field 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 any such officer unless his actual qualifying service at the time he quits Government service is not less than ten years;

Provided further that any such officer who is recruited at the age of thirty five years or more may, within a period of three months from the date of his appointment elect to forego his rights to pension where-upon he shall be eligible to subscribe to a Contributory Provident Fund.

Note: (1) The option once exercised shall be final.

Note: (2) The decision to grant the concession under this article shall be taken by the Administrative Ministry at the time of recruitment in consultation with the Ministry of Finance and the Union Public Service Commission. The consultation with the Union Public Service Commission will be restricted to those posts which fall within their purview."

Pension Rules came into force on 1.1.1972. These rules have

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been amended from time to time. The amended portion which also reflects the amendment carried out vide notification dated 10th February, 1988 runs thus:-

"30. Addition to qualifying service in special circumstances -

(1) A Govt. servant who retires from service or post after 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 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 Govt. 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.

(2) A Government servant who is recruited at the age of thirty five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in sub rule (2), once exercised, shall be final.

8. The crucial question, upon the determination of which question hinges the fate of instant case is as to whether Applicant's claim is admissible under Rule 30 of the Pension Rules. Before ¹grappling with ^{the} crucial issue, we may dispose of some peripheral points raised by the learned counsel for the parties. The learned counsel for the Applicant submitted that Applicant merely seeks benefit of such period as falls short of 33 years and that it is a question of addition of only one and half year to the qualifying service for enabling the Applicant to earn full superannuation pension. We are not aware of any rule or canon of construction on the basis of ^{which} duration of period determination ~~the~~ question of admissibility of a certain claim which is dependent on the true scope of particular statutory rule. The learned counsel for the parties also referred to the provisions of CSR 404-B in support of their cases. The learned counsel for the Respondents, in particular, stressed the point that at the time the Applicant was appointed to the post of Assistant (Legal), the Pension Rules were not in force. This submission would not avail the Respondents as Rule 30 ^{we will} as ^{presently} show, is the rule which would regulate the question of admissibility or otherwise of Applicant's claim. Mere fact that the Pension Rules came into force on a date subsequent to the recruitment of the Applicant would not render a claim ⁱⁿ admissible provided that the same is ^{admissible} otherwise ^{1/} under rule 30.

9. Adverting to the central question, it is to be seen as to whether Rule 30 on its true construction would cover the case of the Applicant. The expression "Govt. servant who retires from service or post after

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31.3.1960", appearing at the commencement of Rule 30(1) had been inserted on 10th February, 1988 i.e. prior to the date of superannuation of the Applicant. 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 rule on the date of retirement. existing. As the Applicant has superannuated after the aforesaid expression had been incorporated in Rule 30(1), the factum of Applicant's having been recruited prior to the date of coming into force of the Pension Rules is of little consequence. This brings us to the central question i.e. as to whether Applicant's claim is admissible under Rule 30(1) of the Pension Rules when the same is read with ^{the} rules. Applying the golden rule of construing a statutory provision on the basis of its ordinary and ^{al} grammatic meanings, it would appear to be safe to say that the benefit of adding a certain period of qualifying service would be admissible if the following conditions co-exist:-

- (i) The service or post to which a Govt. servant is appointed is one for which the post graduate research or specialist qualification or experience in scientific, technological or professional fields, is essential;
- (ii) to which candidates of more than 25 years of age are normally recruited; and
- (iii) the recruitment rules of the post in question should contain a specific provision that the service or post is one which carries benefit of this rule.

10. As already stated column 7 of the schedule to the rules shows in un-mistakable terms that the experience of 2 years as Legal Practitioner is essential qualification for this post. During the course of arguments the learned counsel for the Respondents submitted that Applicant was a Central Govt. servant at the time of his recruitment and that in view thereof, the qualification

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of 'qualified legal practitioner' cannot be regarded as essential qualification in this case. The eligibility qualification in the case of a Central Govt. servant is 3 years experience in legal affairs. Prior to his recruitment to the post of Assistant (Legal) Applicant had held the post of Legal Inspector, Legal Clerk, Tabulation Assistant and U.D.C. He held the post of Legal Clerk only for a period of 2½ months, of Tabulation Assistant for a period of 5 months and that of U.D.C. for over 6 years. As regards the post of Legal Inspector, it has not been shown as to whether the aforesaid post can be said to give the incumbent thereof experience in legal affairs. Undoubtedly the Applicant had practised as a Legal Practitioner for a period of more than 2 years. He was, thus, a qualified Legal Practitioner and possessed the requisite experience in the professional field of law. It was also not disputed that candidates normally of more than 25 years of age are recruited to the post of Legal Asstt. Conditions (i) and (ii), therefore, stand satisfied in this case. As regards condition (iii), the amendment to the rules made by GSR -742, dated September 7, 1987, makes it explicit that the benefit of added years of service admissible under Rule 30 of the Pension Rules is admissible to direct recruits to the said post. 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 U.P.S.C. 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. Thus condition No. (iii) also stands satisfied in this case.

11. During the course of arguments, the learned counsel for the Respondents submitted that benefit under

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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). According to the learned counsel, it is not only a case of double benefit but is a case of un-deserving benefit. We find it difficult to countenance this submission. This submission misses the point that the benefit of service rendered by the Applicant under the Central Govt. subsequent to 28.12.56 and prior to 1.3.1968 has not been conferred by virtue of operation of Rule 30. Such a benefit is given to every Central Govt. employee regardless of the fact whether his case falls within the ambit of Rule 30 or not. The benefit of earlier service under the Central Govt. is, thus, independent of the benefit admissible under Rule 30 of the Pension Rules. The learned counsel for the Respondents next contended that a concession has been given by Rule 30 and that the concession is to be viewed in the light of the object for which the concession has been granted and that the admissibility of such a concession has to be construed strictly. It is well settled canon of construction that the ^{recourse to the} object underlying a certain statutory provision for the purposes of interpreting the provision is to be had only ^{or is} of the language in which provision is couched. ^{here} is ambiguous/capable of more than one interpretation. Such is not the case. 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

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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.

12. During the course of arguments, the learned counsel for the Respondents also submitted that the literal or grammatical construction which gives rise to absurdity should be avoided and that the judicial forum is entitled to interpret a statutory provision in the light of ^{the} object and purpose for which it has been made. We are unable to find any absurdity in the interpretation of Rule 30. Another argument put forward by the learned counsel for the Respondents was that only post September, 1987 recruits could be given the benefit of Rule 30 as the amendment states that made to the rules was on 27.4.85 / Assistant (Legal) is not entitled to the benefit of Rule 30 of the Pension Rules. This argument is difficult of acceptance in that the rules position is to be seen not as it existed on 27.4.85 but as it existed on the date of superannuation of the employee concerned. Rules as these existed on 31.3.1988 contain a clear stipulation for according benefit of added years of service admissible under Rule 30 of the Pension Rules to Assistant (Legal). Still another submission made by the learned counsel for the Respondents was that the benefit of Rule 30 is not automatic and that the same is dependent on a decision taken in this behalf and that the Govt. has correctly decided not to accord the benefit to the applicant in the facts and

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circumstances of this case. The main plank of this argument was expression 'may' used in the opening portion of un-amended Rule 30(1). This submission overlooks the fact that the amended expression uses the expression 'a Govt. servant.....shall be eligible'. This argument, thus, is held to be bereft of merit. Another somewhat ingenious contention put forward by the learned counsel for the Respondents was that the Applicant is not entitled to the benefit of Col. 6(a) of the schedule to the Rules as he has not been recruited from the open market. Reliance in this behalf was placed by the learned counsel on Rule 12-A of the Indian Legal Service Rules. 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.

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13. For all what has been said and discussed above, we are of the considered view that the Applicant is entitled to the benefit of Rule 30 of the Pension Rules. The impugned orders Annexure - C and Annexure -L are, therefore, unsustainable and the same are hereby set aside. The Respondents are also hereby directed to grant benefit of

Rule 30 of the Pension Rules by adding to the Applicant's qualifying service for superannuation pension the requisite period in terms of the said Rule within a period of 3 months from today.

14. Application is disposed of accordingly. In the circumstances, there will be no order as to costs.

P.C. Jain
(P.C. Jain) 23/3/90
Administrative Member

B.S. Sekhon
(B.S. Sekhon)
Vice Chairman

23-3-90

MSR