

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

O.A.No.420 of 1988

Date of Decision: 7.7.93.

Amrit Lal Puri .....Petitioner

Versus

Union of India & others .....Respondents.

For the petitioner: Shri R.D. Sharma, counsel.

For the respondents: Shri M.L.Verma, Counsel.

CORAM:

Hon'ble Mr.Justice V.S.Malimath, Chairman.

Hon'ble Mr.S.R.Adige, Member(A)

JUDGMENT (ORAL)

(By Hon'ble Mr.Justice V.S.Malimath, Chairman)

The petitioner Shri Amrit Lal Puri has come to this Tribunal seeking several reliefs. A Division Bench of this Tribunal examined the maintainability of several reliefs claimed in this application vide its order dated 6.5.98. The said order concludes the petitioner in regard to ~~several~~ several reliefs leaving only some of the reliefs for being examined by us. It is, therefore, necessary to advert to the said order. The Division Bench has held that the claim of the petitioner against and the Delhi Administration/in respect of the services rendered by him under/ <sup>the</sup> said administration may be agitated by the petitioner in a separate application. Hence the petitioner would not be entitled to press his prayers 2, 4, 5 and 6 in so far as they have reference to the petitioner's service under the Delhi Administration from where his services were terminated vide order dated 31.7.81. In view of the clear decision of the Division Bench of the Tribunal, none of the reliefs claimed by the petitioner bearing on his service under the Delhi Administration can be examined by us. The other reliefs claimed by the petitioner bear on the service rendered by the petitioner until his temporary service was terminated w.e.f. 01.7.60. The petitioner's

case is that the said order of termination is illegal and invalid. The Division Bench of the Tribunal has examined this aspect of the matter also in its order dated 6.5.88 and has held that so far as the challenge of the petitioner in respect of order dated 27.6.60 terminating his services is concerned, this Tribunal has no jurisdiction to entertain the same. Thus it is clear that we are not entitled to examine the validity of both the orders of termination; one of 1960 and the other of 1981. The order of the Division Bench concludes by saying that there is some area which survives for examination by us in this application. That area pertains to the claim of the petitioner for pension and retirement benefits in respect of the service rendered by the petitioner until his services were terminated w.e.f. 1.7.60. Therefore, we have to proceed to examine the claim of the petitioner in regard to pension and retirement benefits consequent upon his termination from service w.e.f. 1.7.60 on the basis that there is a valid termination order of his service dated 27.6.60. It is on that basis that the Division Bench has said that <sup>as</sup> the right to pension gives rise to recurring cause of action, the same merits examination. We will, therefore, examine the only question which survives for examination in the light of the earlier decision of the Tribunal dated 6.5.88.

2. The relevant facts necessary for examining the reliefs in this case may now briefly be stated as follows;

3. The petitioner was appointed on 9.1.50 as Mate in the Central Tractor Organization under Central Water & Power Commission (CWPC). He was required to be on

probation for a period of 12 months. Even before expiry of probation period, he says that he was promoted on 2.1.51 as Junior Mechanic. He was further promoted on 1.2.53 as Mechanic and put on probation for a period of 12 months. He offered himself for appointment to the post of Foreman under the Delhi Road Transport Authority ( DRTA ) He says that he sent his application to his superiors in the department for forwarding the same and that on his being selected he was offered appointment which he accepted. He was relieved from the CTO and reported as Foreman under DRTA on 24.2.58. He again applied on 9.2.59 for the post of Foreman in CWPC in Water Wing. He was duly selected and appointed as a temporary Foreman as is clear from the offer of appointment dated 10.3.59 . He accepted the appointment and joined the service on 20.4.59 at Nagarjuna Sagar, Dam Site. His services were terminated w.e.f. 1.7.60 vide order dated 27.6.60 invoking Rule 5 of Central Civil Services (Temporary Service) Rules, 1949 which were in force at the relevant point of time. As already stated, the Division Bench has already said that we have no jurisdiction to entertain the grievance of the petitioner in regard to validity of order of termination dated 27.6.60. The case of the petitioner is that he has rendered 10½ years of service without break from 9.1.50 to 30.6.60. He, therefore, claims that the benefits of 10½ years' service should be given to him in the form of pension and gratuity. The question for consideration is as to whether the petitioner is entitled to these retirement benefits.

4. At the out set we would like to say that even assuming that the limited relief regarding retirement benefits is one which is within our jurisdiction, we would be justified in declining to

examine the prayer of the petitioner having regard to the fact that the petitioner has slept over his right for an unduly long time. That he was agitating his right by making representations to one authority or the other is not a good answer. Much of the evidence would be lost by the lapse of such long period. We would therefore be justified in declining to interfere on the ground of inordinate delay and laches on the part of <sup>the</sup> petitioner in approaching the Tribunal. Be that as it may, as the question raised has been debated at length we shall express ourselves on the merits of the case as well.

5. The retirement benefits are some of the rights which flow from the conditions of the service of a Government servant. A person, who approaches the Tribunal for grant of retirement benefits such as pension, gratuity etc. has to establish that he is qualified for such reliefs, by placing reliance upon the relevant provisions and conditions of the service. He has to produce materials to establish that he fulfils the conditions for earning the same. As already stated the petitioner was appointed on temporary basis and his services were also terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1949. As already held it is not open to us to examine the validity of the order. In other words, we must proceed on the basis that the petitioner was a temporary Government servant whose services were duly terminated vide order dated 27.6.60 w.e.f. 1.7.60. As the petitioner was governed by the Central Civil Services (Temporary Service) Rules, 1949, we have to look into the provisions of the said rules to ascertain if the petitioner is entitled to pension, gratuity or any other retirement benefits. Rule 9 of the <sup>said rules</sup> provides that

"A Government servant in quasi-permanent service shall, if his service is terminated otherwise than as a disciplinary measure or by resignation, be eligible for-

- (a) A gratuity at the rate of half a month's pay for each completed year of quasi-permanent service, such gratuity being payable on the basis of the pay admissible to such Government servant in respect of the specified post on the last day of his service, and
- (b) Any gratuity to which he is entitled in respect of his service before his appointment to quasi-permanent service:

Provided that this rule shall not apply to persons borne on establishments to which Contributory Provident Fund benefits are attached".

5. This rule does not speak of grant of pension. It speaks only of grant of gratuity and that too only in respect of a Government servant in quasi-permanent service. It is not the case of the petitioner that the petitioner ever became a quasi-permanent Government servant. It does not contemplate the grant of pension. Hence, it is clear that under the statutory rules by which he was governed and under which his service were also terminated vide order dated 27.6.60, the petitioner is not entitled to claim either pension or gratuity. It is, however, contended by Shri Sharma, learned counsel for the petitioner that Central Civil Services (Temporary Service) Rules, 1965 do make provisions which are favourable to the petitioner and can be pressed into service. Firstly, it is necessary to point out that the services of the petitioner having been terminated w.e.f. 1.7.60 long before the Central Civil Services (Temporary Service) Rules, 1965 came into force, the question of invoking 1965 Rules does not arise. Even otherwise, we find that the petitioner does not get rights under those rules either. Reliance was placed by Shri Sharma, learned counsel appearing for the petitioner on Rule 10(1-B) of 1965 Rules.

The said rule read as follows:-

"In the case of a temporary Government servant who retires 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 ten years or who has sought voluntary retirement by giving three months' notice in writing on completion of 20 years, provisions of sub-rule (1) shall not apply and in accordance with the provisions of Central Civil Services (Pension) Rules, 1972 -

(i) such a Government servant shall be eligible for the grant of superannuation invalid or retiring pension, as the case may be, and retirement gratuity; and

(ii) in the event of his death after retirement, the members of his family shall be eligible for the grant of family pension".

6. This provisions can be invoked only if the conditions specified there in are satisfied. These

conditions are -(i) Government servant must retire from service on attaining the age of superannuation or

(ii) he must have retired 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 ten years or

(iii) who has sought voluntary retirement by giving three months' notice in writing on completion of 20 years.

None of these three conditions are satisfied by the petitioner to claim the benefit of Rule 10(1-B). Even assuming for the sake of argument that the petitioner is governed by 1965 Rules and the provisions are attracted, the petitioner is not entitled to any retirement benefits as he does not satisfy any of the conditions prescribed by the relevant statutory provisions.

7. Hence we have no hesitation in holding that the petitioner is not entitled to claim any retirement <sup>such</sup> benefits/as pension or gratuity, either under 1949 Rules or 1965 Rules.

8. It is not possible to accept the contention of the learned counsel for the petitioner that the benefit of subsequent orders of the Government providing liberalized scheme for revising pension can be invoked or pressed into service. None of those provisions can be invoked by the petitioner who was not a pensioner at any relevant point of time. The benefit of the order revising pension would be available to him only if the petitioner was a pensioner. They are helpful only to secure improvement in the quantum of pension. As we held that he is not qualified for the pension, the question of the petitioner invoking the subsequent orders of the Government issued from time to time in regard to revision of pension will not come to his aid.

9. The last contention urged by the learned counsel for the petitioner is that the petitioner, who was appointed on probation must be deemed as confirmed on expiry of the probation period. It is well settled that a person who is appointed on probation unless there is a statutory limit on the extension of the period of probation he continues to be<sup>a</sup> probationer until the appropriate authority declares that he has satisfactorily completed the period of probation. Even otherwise, as we are not entitled to examine the validity of the order of termination dated 27.6.60 which was made on the basis that he was a temporary Government Servant, we cannot by an indirect method nullify the effect of that order by saying that he must be deemed to have been confirmed and, therefore, the provisions of Temporary Service Rules are not applicable. Hence it is <sup>not possible to accept</sup> this contention either.

10. For the reasons stated above, this application fails and accordingly it is dismissed. No costs.

*S.R. Adige*  
(S.R. ADIGE)  
MEMBER(A)

*V.S. Malimath*  
(V.S. MALIMATH)  
CHAIRMAN.

(ug)  
13071993