

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. No. 1025/88.

Decided on 23.3.1990.

J.V. Mehta

.....Applicant

Vs.

1. Secretary, State Govt. of Gujarat,
Gandhi Nagar, Gujarat.
2. Secretary, Ministry of Defence,
New Delhi.
3. Secretary,
Ministry of Information & Broadcasting,
New Delhi.
4. The Addl. Secretary,
Pension & Pensioners Welfare Deptt.,
New Delhi.

.....Respondents.

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

For the Respondents - Sh. Raj Kumari Chopra, Advocate.

B.S. Sekhon:

The factual background germane to the adjudication of the instant Application lies within a short compass. Applicant retired from the post of Sr. Architect on 31.8.85 (AN) - the date on which he attained the age of superannuation. At the time of retirement Applicant was serving in the Ministry of Information & Broadcasting (Civil Construction Wing of All India Radio) on deputation. Parenthetically the department of the Applicant was Ministry of Defence, MES. The period of service rendered by the Applicant in the State Govt. of Gujarat has also been added to the qualifying service for purposes of superannuation pension and the Govt. of Gujarat has undertaken to bear the pensionary liability ~~for the~~ service rendered by the Applicant from 17.1.62 to 3.11.66. Original

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pension of Rs. 1604/-p.m. and the residual pension after deduction of the value of the added pension was sanctioned vide PPO No. 1084, dated 19.8.85. Copy of the PPO was transmitted to the State Bank of India, Parliament Street and copy thereof was also endorsed to the Applicant. Vide communication dated 17/19th September, 1985 (copy Annexure-L), Applicant's pension has been recalculated on the basis of Army Headquarters letter No. 77447/II/EIB, dated August 20, 1985.

~~By [] revised [] order dated 19.9.85 (Annexure-M),~~
the amount of basic pension has been reduced to Rs. 1323/- p.m. and the pension payable after deduction has been worked out as Rs. 882/- p.m. Applicant submitted a representation against the aforesaid order, inter alia, on the grounds that it is not a case of correction but of revision of pension same/ arbitrary, unfair, unilateral and that he is entitled to the added years of service under Rule 30 of the C.C.S. (Pension) Rules, 1972 (for short the 'Rules'). Vide communication dated 31.3.86 (copy Annexure-P), Applicant was advised that he had been given the benefit of his earlier service in the State Govt., his subsequent appointment under the Central Govt. as Sr. Architect was obviously not the first spell of service under the Central Govt. and that in the circumstances the question of giving him the benefit of added years of service under Rule 30 in the post of Sr. Architect does not arise. Another communication which ~~was~~ was addressed to the Applicant by the Department of Pension & Pensioners Welfare is of 10th December, 1987. As per the aforesaid communication Applicant was advised that on subsequent analysis having regard to the new facts that became available, it was found that he was not eligible for the benefit of the Rules and

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that direct recruits alone are eligible for the benefit thereof and that it is not possible to make departure from the rule that has stood the test of time.

2. The salient grounds on which the orders revising his pension have been assailed are that the same are hit by rule 70 of the Rules. He is entitled to add the additional period to the qualifying service for supernumerary pension under Rule 30 of the Rules. Impugned orders are violative of the principles of natural justice.

4. Respondents have contested the Application. The defence as set out in the counter is that the Applicant is not entitled to the benefit of Rule 30 as the Recruitment Rules for the post of Sr. Architect in force at the time of appointment of the Applicant did not provide for grant of benefit of added years of service under Rule 30 of the Rules. Applicant's case is not covered by the aforesaid rule as he is not a Post Graduate and [redacted] was not direct recruit to the post of Sr. Architect. It has been further pleaded that Applicant was initially sanctioned pension at the rate of Rs. 1604/- p.m. inadvertently vide PPO No. 1084, dated 31.7.85 by giving him the benefit of added years of service to which he was not entitled and subsequently the said benefit has been withdrawn and the pension has been recalculated and reduced to Rs. 1323/- p.m. as a result of reduction in the qualifying service.

5. We have heard the arguments addressed by the learned counsel for the parties and have considered the pleadings, documents on record including the rules position.

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6. The learned counsel for the Applicant banking on rule 70 of the Rules contended that pension once authorised

cannot be revised to the disadvantage of the petitioner unless revision becomes necessary on account of detection of a clerical error subsequently. The learned counsel added that it is clearly not a case of revision on account of deduction of a clerical error. The learned counsel for the Respondents countered by stating that the benefit of Rule 30 to which the Applicant is not entitled had been given to the Applicant inadvertently and that the Respondents are entitled to rectify/correct a bonafide and inadvertent error. It is no doubt correct that as a general rule Govt., is entitled to rectify/correct a bonafide or inadvertent error. This general rule will not, however, hold the field in case where there is a specific bar or injunct contained in the statutory provisions. Rule 70 of the Rules contains a clear injunct against the revision of the once authorised pension to the disadvantage of the Govt. servant concerned save two cases. These being where:-

- i) Revision become necessary on account of detection of clerical error subsequently, and
- ii) It is permissible under the provisions of rules 8 and/and 9 of the Rules.

Rules 8 and 9 cannot be invoked to justify the impugned orders. The main issue/ thus, to be considered is as to whether it is a case of modification/revision on account of detection of a clerical error. A perusal of para 7 of the counter as also of Annexures L, U, leave little doubt on the point that the Applicant's pension has been reduced/revised on account of reduction in the period of qualifying service. The period of service has been reduced for the reason that Applicant has not been found to be entitled to the benefit of Rule 30 of the Rules. We entertain no

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doubt whatsoever that it is not a case of modification/revision of the pension on the basis of a clerical error. That being so, the impugned order falls within the ambit of rule 701 and cannot, therefore, be sustained.

7. During the course of arguments, the learned counsel for the parties also joined issue on the question of admissibility or otherwise of the benefit of rule 30 of the rules to the Applicant as also on the question of impugned orders being violative of the principles of natural justice. Since Applicant succeeds on the first ground, we do not deem it necessary to ~~express~~ ^{our} views on these points.

8. In view of the foregoing, impugned order dated 19.9.85 (Annexure-M) is hereby quashed and the Respondents are directed to restore the pension sanctioned to the Applicant vide order dated 31.7.85. The Respondents are directed to comply with the aforesaid direction within a period of three months from today.

9. In the circumstances, we make no order as to costs.

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

(B.S. Sekhon)
Vice Chairman

MSR

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