



**CENTRAL ADMINISTRATIVE TRIBUNAL**

**CHANDIGARH BENCH**

O.A. No. 060/943/2019

(Order reserved on 18.02.2021)

Chandigarh, this the 3<sup>rd</sup> day of March, 2021

**HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

Ajinder Kaur w/o Dr. Gurcharan Singh, age 68 years, Resident of 34, Glendevon Way, Chellaston, Derby DE73 5WG England, presently at House No. 207, Sector 45 A, Chandigarh 160047.

.....Applicant

By Advocate: Mr. Dhiraj Chawla

Versus

1. Chandigarh Administration through its Secretary, Department of Education (Schools), Deluxe Building, Sector 9, Chandigarh-160017.
2. Director, School Education, Chandigarh Administration, First Floor, Addl. Deluxe Building, Sector 9, Chandigarh-160017.
3. District Education Officer, Chandigarh Administration, Addl. Deluxe Building, Sector 9, Chandigarh-160017.
4. The Principal, Govt. Model Senior Secondary School, Sector 16, Chandigarh-160015.

.....Respondents

By Advocate: Mr. Arvind Moudgil



## **ORDER**

### **AJANTA DAYALAN, Member (A):**

1. The present OA was filed by the applicant Ajinder Kaur seeking setting aside of order dated 26.02.2019 (Annexure A-1) whereby her claim for pension has not been acceded to subsequent to her resignation.

2. The applicant has stated that she was an international sports woman and was Captain of Indian Woman Hockey Team in the World Cup in 1974 and 1975. She was also recipient of Arjuna Award for the year 1974. She served as Lecturer at Government Model Senior Secondary School, Sector 35, Chandigarh from 12.12.1990 to 07.05.1998 and Government Model Senior Secondary School, Sector 16, Chandigarh from 08.05.1998 to 05.12.2003. As such, total length of her service is 12 years, 11 months and 22 days.

3. The applicant further submitted that her husband was an ENT surgeon practicing in UK. As such, she availed Extraordinary Leave without pay in two spells for visiting UK. As her husband was settled in UK while she was working in Chandigarh, she submitted one month's notice for resignation alongwith one month salary on 01.11.2003 (Annexure A-3) effective from 04.12.2003. This was accepted w.e.f. 05.12.2003 vide order dated 10.12.2003.

4. The case of the applicant is that having rendered more than ten years service with the respondent department,



she is entitled for proportionate pension in terms of Rules 4.19(b), 6.16 A (2), Rule 6 and Rule 16 A (3) of Punjab Civil Services Rules, Volume II.

5. The applicant has also relied on judgement of Punjab and Haryana High Court in case of **Om Parkash Versus F.C.P.S. to Govt. of Haryana**, 2007(2) SCT 422, **HVPNL Versus Saroj Bakshi**, 2016(1) SCT 584 and **Geeta Devi Vs. State of Punjab and Others**, 2014(3) PLR 401.

6. The applicant has also argued that at the time of her resignation, she was never informed about her entitlement to proportionate pension. She has also stated that her case for grant of pension was recommended by the respondents No. 3 and 4 to AG, UT vide forwarding letter dated 03.07.2018 (Annexure A-8).

7. The applicant has also submitted that Rule 7.5 of Punjab Civil Services Rules, 1953 (Vol. II) will not be applicable due to overriding effect of Rule 6.16(2) of Punjab Civil Services Rules, 1953.

8. In view of all above, the applicant has concluded that she is entitled to proportionate pension for the years of her service rendered by her in the respondent department.

9. The respondents have contested the claim of the applicant. They have not disputed the facts of her service. However, they have stated that the applicant submitted her resignation from the post w.e.f. 05.12.2003 (F.N.) due to unavoidable circumstances. She also deposited payment of Rs. 14,464/- as one month salary on account of resignation



(Annexure R-2). This was accepted by the competent authority vide order dated 11.12.2003 (Annexure A-4).

10. The respondents have further submitted that it was only on 23.06.2018 (Annexure R-3) that the applicant submitted request for grant of pension and gratuity. The same was considered by the department and as per provisions of Rule 7.5(1) of Punjab Civil Services Vol. I, Part-I, the request for grant of pension and gratuity was rejected vide order dated 26.02.2019 (Annexure A-1).

11. The respondents have further submitted that no cause of action has arisen to invoke jurisdiction of this Tribunal as Rule 7.5 of Punjab Civil Services Rules Volume I Part I clearly defines that resignation entails forfeiture of past service. Accordingly, her request for grant of pension and gratuity was rightly rejected. They have further averred that the judgements cited are not relevant to the facts and circumstances of the present case. Further, it is averred that mere forwarding the case to AG, UT does not suggest that the applicant is entitled for pension and gratuity. The respondents have further stated that revised Pension Rules as appended by the applicant are not applicable in the present case.

12. In view of clear provisions of Rule 7.5 of Punjab Civil Services Rules, the respondents have concluded that the applicant is not entitled for grant of pension and gratuity and as such, OA deserves to be dismissed.



13. I have heard the counsel of the opposing sides and have also gone through the pleadings in the case. I have also given my thoughtful consideration to the entire matter.

14. First of all, I note that the applicant resigned way back in 2003. However, even as per her own pleadings, she submitted her first application for sanction of pension and gratuity only on 23.06.2018 (Annexure R-3). Thus, it was after more than 14 years that she first made a request. The order rejecting the same was passed on 26.02.2019. But the cause of action for the applicant, if at all, arose right back in 2003 when she resigned from service and not in 2019 when her request was rejected. The delay on the part of the applicant herself in making even a first request for grant of relief cannot be allowed to cover the period of limitation on the plea that the order of rejection was issued in 2019. The fact remains that the applicant herself did not make any request for any relief whatsoever for full 14 years. The Hon'ble Apex Court has made it very clear in the case of Union of India Vs. M.K. Sarkar, (2010) 2 SCC 59 that persons who sleep over their rights lose the right itself. It is also held that period of limitation has to be applied strictly in all cases. In the instant case, there is a delay of over 14 years in making the first claim. This is also the case not of an illiterate person, but of a person who is herself well placed and is educated and has also travelled widely.

15. I also observe that there is no application for condonation of delay by the applicant; perhaps, on the ground that in the OA, she is challenging the order dated 26.02.2019.



However, this is not a suo-motto order issued by an authority depriving her of an earlier right. This is only an order on the request made by the applicant. If the request is itself delayed by over 14 years, the cause of action cannot be taken to be subsequent to issue of rejection order. The limitation period starts right from the date when her resignation was accepted way back on 10.12.2003.

16. I further observe that even in the OA, the applicant has not given any reason for the delay in making her first request except a general one that during the interregnum period, the applicant came to know about her entitlement to proportionate pension as well as some of the judgements of the Hon'ble courts. She has also added that the dealing officials in the respondent department did not inform her about her entitlement of proportionate pension at the time of her resignation. I do not accept any of these pleas as these are very general and may be given in each and every case. If such pleas are accepted, the concept of limitation period itself will effectively become a nullity. Besides, the applicant's plea that the respondents did not inform her, is a mere excuse now to cover her own inactions and is not convincing at all at this point of time.

17. In view of all above, it is clear that the case deserves to be dismissed on the ground of limitation alone. However, in the interest of justice, I have also gone into the merits of the case.



18. Regarding the basic entitlement or otherwise of the applicant to grant of pension and gratuity, it is necessary to go through the relevant provisions of the Rules very carefully.

19. First, I will go through the Rules relied upon by the applicant. Rule 6.16 A (2) reads as follows:-

"6.16. A Government employee retiring in accordance with the provisions of these rules before completing the qualifying service of ten years shall not be entitled to any pension but he shall be entitled to a service gratuity calculated at the uniform rate of half month's emoluments for every completed six monthly period of service.

6.16-A. (1) Full pension to a Government employee, who retires on or after the 1st day of December, 2011, in accordance with the provisions of these rules, shall be admissible after rendering a qualifying service of twenty-five years and shall be calculated at the rate of fifty per cent of emoluments or average emoluments, whichever is more beneficial to him:

Provided that the pension so calculated shall, in no case be, less than three thousand and five hundred rupees per month.

(2) In case the qualifying service of a Government employee is ten years or more but less than twenty-five years, the amount of pension shall be such proportion of the maximum pension admissible under sub-rule (1) as the qualifying service rendered by him bears to the maximum qualifying service of twenty-five years:"

20. The Rule 7.5 of Punjab Civil Services Rules, 1953

Volume I relied upon by the respondents reads as follows:-

"7.5 (1) Resignation from a service or a post, unless it is allowed to be withdrawn in public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies for pension."

21. The applicant has basically relied mainly on Rule 6.16 A(2) to conclude that having rendered ten years service, she is entitled to pension. This can be proportionate as her service is less than maximum service of 25 years for the purpose of fixation of pension.



22. I, however, observe that the applicant is basically relying on Rule 6.16 A(2) which has been reproduced above. However, what is being missed out here is that this Rule at the start itself states that a Government employee “retiring” in accordance with provisions of these Rules before completing qualifying service of ten years shall not be entitled to any pension, but he shall be entitled to service gratuity at specified rates. The crucial word here is “retiring”. The persons resigning from service cannot be covered under this as for resignation, there is a clear and separate provision. The two events of resignation and retirement cannot be compared to each other. Retirement is a pre-determined event based on the age of the employee and the retirement age for the category of that employee decided by the concerned Government. The employer - that is the Government knows about it well in advance and can plan ahead for scheduling its various activities and work being discharged by the employees. On the other hand, resignation is at the will of the employee. It is a sudden event and there is no time for the Government to properly plan for the discharge of the work being done till that date by the employee. In case of resignation, there is only a notice period of one month which can also be waived by depositing one month’s salary in advance as has been done in case of the applicant. Resignation is even different from voluntary retirement as in case of voluntary retirement, approval of competent authority is required. On the other hand, in case of resignation, no approval by competent authority is required. Only the resignation needs to be accepted.





Thus, it is basically the will of the employee in case of resignation and for discharge of work of the employee who resigns, the employer is left with no time to plan or schedule the things. Thus, the two are not at par at all and have been treated differently for the purpose of pension and gratuity as well. A person who renders service of varying periods, but retires due to various reasons like superannuation or invalidity or chooses to voluntarily retire, is given pension on pro-rata basis for the service rendered by him. However, in the case of resignation, there is no question of pension or gratuity as the employee chooses to sever all relations with the employer.

23. The above position is also clear from the fact that ten years service is mentioned as the minimum service for entitlement to the pension. This applies only to cases where the employee is retiring and not for other cases where pension is clearly forfeited.

24. I also observe that Rule 6.16 A(2) which is being relied upon by the applicant has to be read with Rule 6.16 A(1). If the two are read together, the whole meaning becomes clear. As per Rule 6.16 A(1), full pension is to be granted to a Government employee after rendering of twenty five years of qualifying service. As per Rule 6.16 A(2), in case qualifying service of Government employee is ten years or more, but less than twenty five years, the amount of pension is to be proportionate to maximum pension admissible for having rendered the maximum qualifying service. However, to note even from the very Rule cited and quoted by the applicant



herself, Rule 6.16 A(1) clearly talks of pension to Government employees who retire in accordance with the provisions of the Rules. In continuity, Rule 6.16 A(2) will also apply only to employees who retire with lesser service than twenty five years. It is not Rule 6.16 A(2) that will apply in case of resignation for which a separate and very clear Rule 7.5 exists.

25. Further, I observe that Rule 7.5 is very categorical and clear. The same has been quoted above. It clearly states that resignation from a service or a post unless allowed to be withdrawn, entails forfeiture of past service. This Rule further goes on to say that the only case where forfeiture of past service in case of resignation will not be entailed is when it is taken up with proper permission to take up another appointment under the Government where also the service qualifies for pension.

26. Thus, it is clear that under Rule 7.5, there is no question of pension as the past service already stands forfeited.

27. In case the pleading of the applicant is accepted, Rule 7.5 will become a nullity as there will be no forfeiture of past service in case of resignation. This cannot be the interpretation as Rule 7.5 very much exists and cannot be rendered into nullity by another interpretation.

28. As regards overriding effect to Rule 6.16 over Rule 7.5, there is no such overriding provision in Rule 6.16 or even elsewhere in Rule 6. No interpretation of law can be made such that the overriding effect of one provision – even where there is such overriding effect (though there is no such overriding effect in the present case) - renders the other provision in a complete



nullity. As such, to conclude that Rule 6.16 has overriding effect is not a right interpretation of Rules especially in view of clear and categorical provisions of Rule 7.5.

29. The applicant has further argued that in case of resignation on account of domestic problem, the same should be treated as voluntary retirement if the employee has completed qualifying service. I do not agree with this argument. Ordinarily, an employee is not allowed to resign if proceedings of major penalty are pending against him and he is likely to be dismissed or removed from service in case charges levelled against him are proved. This is so because the resignation should not become a way out for the employees committing such lapses that deserve punishment of dismissal or removal. That being so, resignation from service on account of official matters would not be ordinarily permissible. Hence, resignation is generally on domestic or private grounds only like ill health, relocation of residence and such other grounds. Even in such cases, the rule position is very clear and is indicated in Rule 7.5 of Punjab Civil Services Rules. As per this Rule, such resignation will also entail forfeiture of past service.

30. The above is especially so in case of the applicant. As per her own pleadings, her husband was an ENT Surgeon working in UK. As such, she availed of Extra Ordinary Leave for total 200 days in two spells for visiting UK. As her husband was settled in UK while she was working in Chandigarh, she submitted one month notice for resignation on 01.11.2003 effective from 04.12.2003 (Annexure A-3). Here, she has clearly



stated that she is not in a position to continue her service due to family circumstances. On 05.12.2003 she again sent a letter to DPI (Schools) informing him that "due to unavoidable circumstances", she was unable to continue her services and has submitted her resignation w.e.f. 05.12.2003 (F.N.). In this letter, she has made payment of Rs. 14,464/- vide Challan dated 05.12.2003 to cover one month notice period (Annexure R-2). Again, vide letter dated 23.06.2018 (Annexure R-3), the applicant has stated that she "had to leave the country and immediately resign" from her job. Thus, it is clear that the applicant after resignation, left the country and remained abroad.

31. Further, I observe that the applicant resigned way back in 2003. However, the Rules being quoted by her are all of much later period and of period after 2011. These Rules will obviously be not applicable in her case as in her case only Rules applicable at the time of her resignation, that is, in 2003 would be applicable. These Rules have not been quoted or relied upon by the applicant in the OA.

32. As regards judgements quoted by the applicant, I observe that the specific cases in the three judgements are quite different than the specific case of the applicant. In case of Om Parkash (supra), his resignation was accepted on 09.08.2004. Within one month thereafter on 23.08.2004 itself, the petitioner wrote a letter that this resignation be treated as deemed retirement as he had resigned to take up appointment as Member of Haryana Public Service Commission. Thus, he was



only trying to cover his case under Rule 7.5 (2) as this was a technical resignation. In case of Saroj Bakshi (supra), the husband of the applicant Om Prakash Bakshi was a Typewriter Mechanic with former Haryana State Electricity Board who worked for over twelve years from 1968 onwards. However, due to ill health, he resigned from service on 03.06.1980. He was considered entitled to pension under the Rules being followed by the Board. The applicant is a Central Government employee and not a Board employee and as such this case is not applicable to her. As regards case of Geeta Devi (supra), she was also a Steno Typist in Department of Town and Country Planning, Punjab. This is a case of 1988. She continued to serve upto 1999. After availing leave, she submitted joining report on 25.06.2007 and sought voluntary retirement on the same date. This is as per judgement relied upon by the applicant and annexed in Annexure A-5. But, this is also a case of voluntary retirement and not of resignation.

33. It would be seen from above that the reliance of the applicant on the judgements relied upon is quite far-fetched to say the least. The case of the applicant is quite clearly distinguishable based on its own facts and circumstances.

34. Besides, the Hon'ble Supreme Court has considered the issue in **UNION OF INDIA AND OTHERS VS. BRAJ NANDAN SINGH** , (2005) 8 SCC 325. The Court considered Rule 26 of the Central Civil Service (Pension) Rules, 1972 and held that resignation from service would entail forfeiture of past service. Sub-Rules (1) and (2) of Rule 7.5 of the Punjab Civil



Services Rules are pari materia provision to Rule 26 of CCS (Pension) Rules, 1972.

35. Even, our own jurisdictional High Court of Punjab and Haryana vide decision dated 7.1.2009 in LPA No.181 of 2003 in C.W.P.No.11126 of 1998 titled **STATE OF PUNJAB & OTHERS VS. MEHAR SINGH,** has taken the similar view.

36. Even in CWP No. 10785 of 2016 titled **NAVEEN KUMAR SETHI VS. STATE OF PUNJAB & OTHERS,** decided on 15.2.2019, Hon'ble High Court has reiterated earlier view. In this case, the reliance placed on Rule 6.16(2) of the Punjab Civil Service Rules was not accepted on the ground that in the Punjab Civil Services Rules applicable to State of Punjab, there is no Rule 6.16 (2) and it only exists in the State of Haryana.

37. It is also observed that the applicant in para 8 of this OA states as follows:-

"8. That upon completion of all the pension papers the same was recommended by the respondent No. 3 and 4 to The Accountant General, Union Territory, Chandigarh for grant of Proportionate Pension as is evident from the forwarding letter dated 03.07.2018 which is annexed herewith as Annexure A-8."

However, Annexure A-8 is a letter addressed to AG UT signed by the applicant herself as Head of Office. This does have a counter signature by the Principal, as well as by District Education Officer. However, it is not understood as to how the applicant herself is signing the pension paper as Head of Office as this is against the basic principles of financial propriety. The applicant resigned way back in 2003 and was definitely not Head of Office



in 2018 or thereabout. Thus, her signature on the pension papers itself is highly questionable.

38. In view of all above, it is clear that the applicant is not entitled to the relief sought by her.

39. The OA is dismissed, both on limitation and on merits.

40. There shall be no order as to costs.

**(Ajanta Dayalan)**  
**Member (A)**

Place: Chandigarh  
Dated: March 3<sup>rd</sup>, 2021  
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