

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 2517/1990

Date of decision: 9.1.1990

Shri Kehar Singh and Another ...Applicants

Vs.

Union of India through the ...Respondents
Secretary, Ministry of
Education & Others

For the applicants ...Shri V.P. Sharma,
Counsel

For the Respondent Nos. 1 to 3 ...None
and 5

For the respondent Nos. 4 and 6 ...Ms. Kiran Chugh

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DRONDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers are entitled to see the judgment? Yes
2. To be referred to the Reporters or not?

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

Shri Kehar Singh, applicant No.1 and

Shri Kanwal Singh, applicant No.2 are Ex-Servicemen.

Applicant No.1 joined the Army in 1941 and applicant

No.2 in 1933. After the Second World War was over, they

were discharged from the Army in 1945. Thereafter, the

Government of India in the Ministry of Education

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reemployed them as National Discipline Scheme Inspectors (NSDI) on 1.11.1954. Both of them retired from service on attaining the age of superannuation in December, 1974. At the time of filing of the present application, they have attained the age of about 74 years.

2. The grievance of the applicants against the Govt. have not given them pension and other retirement benefits on the plea that they were not permanent Government servants.

3. The Secretary, Ministry of Education and Culture, Department of Education, Government of India, has been impleaded as the first respondent. The Pay and Accounts Officer, Government of India, Ministry of Education & Social Welfare (NFC closure cell) has been impleaded as respondent No.2. The other respondents are the Under Secretary, Govt. of India, Department of Youth Affairs and Sports, Shastri Bhawan, New Delhi, the Haryana State, through the Chief Secretary, Govt. of Haryana, Chandigarh, the HeadMaster, Govt. High School, Bhora Kalan(Gurgaon) and the Head Master, Govt. High School, Kosli(Rohtak). Despite service of notice, only respondent Nos. 4 and 6 entered appearance through counsel and filed counter-affidavit. The other respondents did not file any reply.

4. The facts of the case in brief are as follows.

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The applicants have served as NDSI in schools under the Central Government and State Government of Haryana and were paid their monthly salary by the Ministry of Education, Government of India. The pension claim of applicant No.1 was sent to the Government of India through the Head Master, Govt. High School, Bhora Kalan (Gurgaon) under whom he was working at the time of his superannuation. Similarly, the pension claim of applicant No.2 was sent to the Government of India through the Head Master, Govt. High School Kosli(Rohtak) under whom he was working at the time of his superannuation. Applicant No.1 was given a meagre sum of Rs.3375/- and paise 50 and applicant No.2 Rs.3997/- and paise 95 towards terminal gratuity. They were not given pension and other retirement benefits on the plea that they were not permanent Central Govt. employees(vide letter of the Under Secretary to the Govt. of India, Department of Youth Affairs and Sports dated 11.9.1985 and of the Under Secretary, Department of Education, Ministry of Education and Culture dated 30.7.1980 and 24.6.1982 at pages 13, 19 and 21 of Paper Book).

5. It is clear from the counter-affidavit filed by the Youth and Sports Officer, Office of Director of Secondary Education, Haryana, that the applicants were not Haryana Government employees at the time of their

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retirement from service. They have stated that the National Fitness Corps Scheme was borne out of National Discipline Scheme started by the Ministry of Rehabilitation, Government of India in the year 1954. The scheme was later on transferred to the Education Ministry, Government of India in the year 1958. After the Kunzru Committee Report of 1963, it was decided that N.D.S. Instructors/P.T.I.(N.F.C.) should be transferred to states and the responsibility for supervision of N.F.C. programme should be vested with the State Govt. As a result of Decentralization of NFC programme by the Government of India, the Haryana Govt. took over the Administrative Control of NDC Instructors/P.T.I.(N.F.C.) who were working in Government/Private Schools in the State from the Govt. of India w.e.f. 1.10.1972 vide Memo No. 3052-Edu.II(6)72 dated 3/4 October, 1972 (Annexure K-1). Para 6 of the said letter inter alia provides as under:-

"The above sanctions are subject to the conditions that the entire expenditure in operating this scheme i.e. pay, allowances and other allied expenditure of the staff is borne by the Govt. of India till their retirement and ever pension/gratuity of the present incumbents is also met by the Union Government."

"A condition may be laid down in the appointment letters of the present incumbents that in case the Govt. of India do not bear or withdraw to bear the expenditure on running this scheme by the State Govt., their services

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will be terminated without any prior notice".

The Haryana Govt. had taken only administrative control of the NDS Instructors/FII(NFC) appointed by the Government of India and the liability of the pay and allowances, pension/gratuity etc. remained with the Govt. of India. In other words the instructors including applicants continued to be employees of Union of India.

6. However, the Haryana Government vide order No.11060-Edu.II(6E)-76/3437 dated 14.10.1976 decided to absorb these Instructors in the State services w.e.f. 1.7.1976 and granted them the pay scales of Haryana Government employees w.e.f. 1.7.1976. Prior to that the applicants were the employees of the respondent No.1 and respondent No.1 was liable to pay the pension/gratuity etc. to the applicants.

7. We have gone through the records of the case carefully and have heard the learned counsel for the applicants and respondent Nos. 4 and 6. On 3.10.1972, the Director of School Education, Haryana wrote to the Secretary, Education Department, Haryana stating that sanction of the Governor of Haryana has been accorded to the taking over of the administrative control of 367 NDS Instructors already working in Govt. Private High and Higher Secondary Schools in the State under the Scheme NFC from the Govt. of India to the State cadre w.e.f. 1.10.1972 and to the creation of 367 posts of NDS instructors w.e.f. 1.10.1972. The

sanctions were subject to the condition that the entire expenditure in operating the scheme, i.e., pay and allowances and other allied expenditure of the staff was borne by the Government of India till their retirement and even pension and gratuity of the present incumbents was also met by the Union Government.

8. As a result of the decentralisation of NDC programme by the Government of India, the Haryana Govt. took over the administrative control of the NDS instructors who were working in Government/Private High and Higher Secondary Schools in the Haryana State from the Govt. of India w.e.f. 1.10.1972. It was also decided to absorb the NDS Instructors in the State Service and to place them on state pay scales w.e.f. 1.7.1976. It was also decided that the pension and gratuity of these employees will be fixed as per State Govt. rules after giving them the benefit of their previous service and that the Central Government will later on reimburse the expenditure on this account. Only those NDS Instructors would be absorbed in the State Service who joined the State Service latest by 31.10.1976 (Vide letter dated 14.10.1976 from the Secretary to Govt. of Haryana, Education Department to the Director of Public Instruction, Haryana, at Annexure II to the counter-affidavit). On

9. It would thus appear that persons similarly situated like the applicants who have been absorbed in the State Government of Haryana w.e.f. 1.7.1976 are entitled to pension and other retirement benefits and the expenditure in this behalf is borne by the State Government. The applicants retired in 1974 and they were not permanent at the time of their superannuation and on that ground, they were given only terminal gratuity and not proportionate pension and other retirement benefits.

10. As regards Central Government employees, Department of Personnel & AR had issued an OM dated 30.12.1980 according to which pensionary benefits would be admissible to temporary Government servant retiring on superannuation on completion of twenty years of service. By the subsequent OM dated 14.4.1987, the benefits have been extended to persons who have completed ten years of service. However, these benefits would be admissible only to those temporary Government servants who were in service on 30.12.1980.

11. The applicants relied upon the judgment of Sawant J., of the Bombay High Court dated 24.1.1985 in Anant Rao Shukul Vs. Union of India and another (Civil Petition No.1181 of 1981). The petition^{er} in that case had joined Army as non-combat cleaner on 26.9.1981. On

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24.4.1959, he got discharge from the Army as an Assistant Foreman in Workshop. On his discharge he received a gratuity of Rs.3,600/-. No other retirement benefit was paid to him. Within four days thereafter, i.e., on the 27th April, 1959 he was reemployed as a Supervisor (Technical) in Station Workshop at Colaba as a civilian. From 1st July, 1962, he was quasi-permanent in the said post and he continued as such till 25th September, 1971 when he retired from service. There was no contributory Provident Fund Scheme both when he was in the Army as well as in the present civilian service. On his retirement from the station workshop, Colaba, he was again paid a sum of Rs.4,650/- as gratuity and no other retirement benefit.

12. On his retirement, he continued to make representations to the authority^{ies} for family pension both for the period for which he served till 24th April, 1959 as a non-combatant cleaner in Army as well as for the period he served as a Supervisor (Technical) in the Station Workshop, Colaba. Before the High Court, he confined his claim for the period from 27.4.1959 till 25.9.1971 when he served as a Supervisor (Technical) in Station Workshop, Colaba. The High Court observed that he would be governed

by the Liberalised Pension Rules, 1950. Rule 7 of Section IV of the said Rules, which lays down the qualification for entitlement to pension reads as follows:-

- "Rule 7 of Section IV:-(1) Half the continuous temporary service under the Government of India rendered after an officer has attained the minimum qualifying age, if followed by confirmation in a pensionable post, will count as 'qualifying service'. The benefit will not, however, be allowed in respect of period of special leave and any temporary service or portion thereof which already counts towards service 'qualifying' under the existing rules.
- (2) Notwithstanding anything contained in sub para (1), in respect of officers retiring on or after the 22nd April, 1950 continuous temporary or officiating service under the Government of India, followed without interruption by confirmation in the same or any other post, shall count in full as qualifying service except:-
- (i) period of temporary or officiating service in a non-pensionable establishments;
 - (ii) periods of casual/daily rated services; and
 - (iii) period of service in a post paid from contingencies".

The High Court held that the petitioner was covered by sub-para (3) of the said rule and directed the respondents to pay him pension as claimed by him.

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The following observations contained in the judgment are relevant:-

"This Rule does not make any distinction between casual permanent service and permanent service. On the other hand, sub-para (2) of the said Rule begins with the non-obstante clause and states that notwithstanding anything contained in sub-para (1) of the said Rule those officers who retire on or after the 22nd April, 1960, whether in temporary or officiating service or in a non-pensionable establishment or whether they have served as casual or in daily rated service or in a post paid from contingency will be entitled to pension. It is not the case of the respondents that the petitioner was covered by any of the three disabilities. On the other hand, it is admitted that the post in which he was serving was a pensionable one and the only ground on which he was denied the pension was that he was not confirmed in the said post. In view of sub-paragraph (2) of the said Rule", the petitioner having retired in 1971, it was not a condition precedent for his entitlement to pension that he should have been confirmed in the post. This being the case, the petitioner is entitled to the pension under the said rules."

13. The appeal filed by the Union of India against the aforesaid judgment before a Division Bench of the Bombay High Court was dismissed on 5.3.1985 and the S.L.P. filed in the Supreme Court was dismissed on 7.5.1986. In our opinion, the applicants before us are also entitled to the same benefit. The Union of India cannot raise the plea that the applicants were not entitled to pension as they were not confirmed in any post. They were holding pensionable posts and had worked for more than 20 years.

14. In the conspectus of the facts and

circumstances, and following the ratio in the aforesaid judgment in Anand Rao Shukul's case, the application is disposed of with the direction to the respondents 1 to 3 (Union of India) to pay pension and other retirement benefits to the applicants for the period of service rendered by them in the service of the Central Government, ignoring the fact that they were not confirmed in any post prior to their retirement. The necessary sanctions should be issued, ^{and} the pension and other retirement benefits should be released to them within a period of three months from the date of communication of this order. We also make it clear that the families of the applicants would ~~also~~ be entitled to family pension in accordance with the provisions of the CCS (Pension) Rules, 1972.

There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 15/12/91
MEMBER (A)

F.K. K...
(F.K. K...)
VICE CHIEF...