

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3097/91

(A2)

New Delhi this the 16th Day of November, 1993.

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman
The Hon'ble Mr. B.S. Hegde, Member (J)

Shri Raghu Nath Singh ...Applicant
(BY Advocate Shri B.B. Raval)

Versus

Union of India & Another ...Respondents
(By Advocate Shri Jog Singh)

1. Whether Reporters of local papers may be allowed✓
to see the Judgement?
2. To be referred to the Reporter or not? ✗


(N.V. Krishnan)
Vice-Chairman
16.11.93.

Central Administrative Tribunal
Principal Bench: New Delhi

(X3)

OA No.3097/91

New Delhi this the 16 day of November, 1993.

Coram:- The Hon'ble Mr. N.V. Krishnan, Vice-Chairman(A)
The Hon'ble Mr. B.S. Hegde, Member (J)

Shri Raghu Nath Singh,
s/o late Shri Durga Prasad,
r/o 88 Press Road,
New Delhi

...Applicant

(By Advocate Shri B.B. Raval)

Versus

1. Union of India, represented by
the Secretary of the Department
of Works & Housing, Government
of India, Nirman Bhawan, New Delhi.
2. The Manager, Government of
India Press, Minto Road, New Delhi
and Assistant Manager-cum-Estate
Officer, Government of India Press,
Minto Road, New Delhi.

...Respondents

(By Advocate Shri Jog Singh)

O R D E R

(Hon'ble Mr. N.V. Krishnan)

This application has been filed by the applicant
who is a retired employee of the Government of India
Press, under the control of respondent No.2.

2. The brief facts giving rise to this O.A. are
as follows:-

2.1 The applicant was appointed as a Distributor
in the Govt. of India Press on 3.11.1952. He alleges
that he was appointed substantively to the higher post
of Compositor Grade-I from 10.1.54. In support of his
claim he has produced the Annexure-1 dated 18.2.64
of the then General Manager of the Govt. of India Press.
As he knew about the applicant only in 1964, he continued
to work as Distributor.

2.2 On 19.6.61, he was deputed as Instructor of
Printing of the Poor House under the Delhi Administration.

He joined on 20.6.61. He continued as such till 1.7.66 when he was reverted to his parent post of Distributor of the Govt. of India Press.

2.3 The applicant then claims as follows in paragraph 4.(ii) of his application:-

"Thereafter, he was prevented from joining duties in the Government of India Press as Compositor Grade-I. He made several representations to the Government of India and also to the Management of the Government of India Press for his posting in the post of Compositor Grade-I of the Government of India Press instead of posting him in the post of Distributor of the Government of India Press, since he had been substantively appointed to the post of Compositor Grade-I, Government of India Press with effect from 10.1.1954 vide the letter of the General Manager of the Government of India Press dated 18.02.1964. However, no reply was sent to the applicant by the Management of the Government of India Press."

2.4 The applicant then filed OA No.858/87 before this Tribunal and by the Annexure-II interim order dated 25.9.1987, the Tribunal directed as follows:-

"Present:-Shri A.P. Mahanty counsel for the applicant.

Shri M.K. Gupta, counsel for the respondents.

We have heard the counsel for the parties. The contention of the counsel for the respondent is that the applicant has been absenting himself without leave for more than 20 years. The submission of the applicant is that he has been applying for leave on medical ground although his leave has not been granted. He further states that applicant is likely to retire from service in 1990 and as such he be allowed to continue in service and join duty.

Admit. Counter be filed within four weeks.

Rejoinder, if any, be filed in one week thereafter. Be listed on 4.11.1987 for hearing.

(V)

Applicant may report on duty forthwith and if he does so the respondent will allow him to join duty. Of course, this order is passed subject to and without pre-judice to any right of the respondents to take disciplinary action against the applicant."

2.5 The applicant joined as Distributor on 6.11.87 and continued till 31.12.90 when he is stated to be retired on superannuation.

2.6 OA-858/87 was dismissed on 7.2.91 on the ground of limitation and non-maintainability, without going into the merits of the contentions.

2.7 The appeal filed by the applicant in the Supreme Court against the order of the Tribunal was dismissed on 12.8.91 (Annexure-III). The Supreme Court, however, directed the respondents to "fix up his pension under the rules on the basis that he worked for 14 years between the period 1952 and 30.6.66."

2.8 The respondents have fixed the pension of the applicant at Rs.375/- per month. The applicant alleges that this has been done without calculating the actual pension which ought to be paid to him after considering the emoluments from 3.11.52 till 30.6.66. The applicant states that the exact quantum of pension has not been determined in accordance with rule 49 (2) (b) of the CCS (Pension) Rules, 1972. He contends that the period of 3 years of service rendered by him as Distributor in the Govt. of India Press in pursuance of the interim orders of OA-858/87 from 6.11.87 to 31.12.90 till he retired, should also be taken into account for the computation of pension.

3. It is in these circumstances that the applicant has prayed for the following reliefs:-

"(i) That your Lordships may kindly direct the respondents to compute proportionate pension payable to the petitioner in accordance with the Rule 49 (2) (b) of the Central Civil Services (Pension) Rules, 1972; and to produce their calculation before the Tribunal before decision.

(ii) Your Lordships may kindly direct the respondents to finalise the computation of the pension payable to the petitioner in accordance with the rules within a period of 3 months from the date of the order.

(iii) That your Lordships may kindly direct the respondents to allow the petitioner to remain in occupation of the Government accommodation which was supplied to him till the final determination of the pension payable to the petitioner.

(iv) That your Lordships may kindly direct the respondents to allow the applicant to occupy the Government accommodation which was allotted to him on payment of normal rent."

It may be noted that the O.A. contains no pleadings regarding relief at (iii) and (iv).

4. The respondents have filed a reply stating that the applicant is not entitled to any relief. It is stated that the O.A. 858/87, earlier filed by him, has been dismissed by the judgement dated 7.2.91 of the Tribunal, a copy of which has been filed as Annexure R-I by the respondents alongwith their additional reply at page 98 of the paperbook. Though the O.A. was dismissed without going into the rival contentions of the parties, there is an observation in para 7 of the judgement that admittedly, the applicant had not worked from 1.7.66 till he reported for duty under the interim orders passed by the Tribunal towards the end of 1987.

5. It is pointed out by the respondents that in the orders of the Supreme Court, dismissing the civil appeal filed by the applicant (Annexure-II) of the O.A. the following orders have been passed:-

"Special leave granted.

Heard counsel for the parties.

On the finding recorded by the Tribunal we hold that the appellant did not return to duty after 1966. It is his claim, and has not been disputed, that he was first appointed as a distributor in the Government of India Press in 1952. He was confirmed in the year 1956 in that post and admittedly he worked upto 30th June, 1966. That being the position we hold that he had worked for 14 years under the Government of India and has earned his pension which should be proportionate on the basis of the period of service.

We allow the appeal to that extent and direct that the respondents shall fix up his pension under the rules on the basis that he worked for 4 years between the period 1952 and 30th June, 1966, within three months from today.

No costs."

6. The respondents, therefore, contend that there is a final judgement of the Supreme Court that the applicant is entitled to pension under the rules on the basis that he worked for 14 years between the period 1952 and 30.6.66. It is also contended that the pension has been fixed correctly on this basis as will be evident from the Annexure-1 and Annexure-2 to the reply filed by the respondents which gives the necessary calculations. It is seen that the qualifying service has been taken as 13 years, 5 months and 9 days and the average emoluments as Rs.994/- taking his pay of Rs.990 from 1.3.90 to 31.10.90 and of Rs.1010 from 1.11.90 to 31.12.90. He has been given the minimum pension of Rs.375/- as the pension under the rules is less. It is admitted by the respondents that Death-cum-Retirement Gratuity

has not been paid as two departmental enquiries are still pending against the applicant.

7. The applicant has filed a rejoinder, reiterating the averments made in the O.A. He claims therein that he has put in service of about 38 years and retired on 31.12.90. In support he has filed Annexure MP-2 certificate given on 31.12.90 by the Manager, Government of India Press, which mentions that he served for 38 years one month and 29 days from 3.11.52 to 31.12.90. He also contends that his pay was fixed at Rs.950/- and he was not given any increment, as evident from the bill of October, 1990 (MP-3).

8. We have heard the learned counsel for the parties.

9. Shri B.B. Raval, learned counsel for the applicant seriously urged that the applicant has actually served the respondents, Govt. of India Press uninterruptedly from the period from 3.11.52 to 31.12.90 as evidenced by the Annexure MP-2 certificate given to him on 31.12.90 by the Manager, Govt. of India Press, Minto Road, New Delhi. He, therefore, contends that full pension should be given to the applicant and a direction to this effect should be given to the respondents. He states that the respondents have initiated two departmental enquiries in respect of stale matters and have withheld giving him full pensionary benefits and, therefore, he should be permitted to remain in occupation of the Government quarter until his pensionary dues are paid. He also prays that he should be required to pay only normal rent for this accommodation. He has relied on the decisions of the Suprme Court in AIR 1991 470 and AIR 1991 (1) SC 725 in support of his prayers.

10. Shri Jog Singh, the learned counsel for the respondents, points out that the decision of the Supreme Court was rendered on 12.8.91. It has been finally held in that order that the applicant did not return for duty after 30.6.1966. The applicant cannot now rely on the service certificate dated 31.12.90 to contend that his employment continues from 1952 till 1990. Secondly, it is pointed out that the applicant having retired in 1990 cannot have any claim to continue in the residential accommodation on payment of normal rent. The benefit of occupying the house after retirement on normal rent has already been given to him and he is in unauthorised occupation from 1.9.91 and has not deposited the licence fee and damages upto 1992. He is, therefore, not entitled to any concession in so far as licence fee is concerned.

11. We have carefully considered the rival contentions. We notice from the judgement of the Tribunal in OA-858/87 that one of the reliefs sought by the applicant was as follows;—

"a declaration that the Government of India Press illegally prevented the applicant from joining his duties in the post of Compositor Gr.-I after his reversion from the Delhi Administration and that the respondents are liable to pay all his salary and other emoluments for the post of Compositor Gr.-I w.e.f. 10.1.1954 till 19.6.1961 and again from 1.7.1976 till 6.11.1987 when he was allowed to join his duties in the post of Distributor pursuant to an order passed by the Central Administrative Tribunal to that effect;"

(J)

In the light of that prayer, the applicant cannot now turn round and place reliance on the so called service certificate, (Annexure MP-2) stated to be issued by the Manager of the Government of India Press. As this certificate is contrary to his own averments, no reliance can be placed on it. Besides, he did not produce this certificate before the Supreme Court either before the Annexure-III order was passed or after it was passed, to seek a review thereof. The Supreme Court had held that the applicant did not return to duty after 30.6.66 and that he has rendered a service of only 14 years upto 30.6.66.

12. Therefore, this order of the Supreme Court has to be rigidly complied with by the respondents also. We find from the Annexure-1 to the reply filed on 9 April, 1992 that the qualifying service has been reduced to 13 years 5 months and 9 days. The respondents have no authority to effect this change. Likewise, it is seen from Annexure-2 that, for calculating the average emoluments for the purpose of sanctioning pension, the emoluments from 1.3.90 to 31.12.90 have been taken into account and the average emoluments is determined at Rs.994/-. The pension is worked out at Rs.204/-, which being less than the minimum pension of Rs.375/- the minimum pension of Rs.375/- has been allowed. Both Annexure-1 and Annexure-2 state that the applicant retired on 31.12.90. We are of the view that the respondents have misconstrued the order of the Supreme Court. The Supreme Court has held that the applicant retired on 30.6.1966 and not on 31.12.90. Though the facts that, by an interim order dated 25.9.87 in OA 858/87 of this Tribunal, the respondents were directed to allow the applicant to join duties and he joined duties on

(6)

6.11.87 and was retained till 31.12.90 when he attained the age of superannuation, ~~were~~ known to the Supreme Court, yet no order was passed by that Court in regard to that service. Therefore, the respondents were absolutely incorrect in treating the applicant as having retired on 31.12.90 and taking the average of the emoluments from 1.3.90 to 31.12.90 for the purpose of pension.

13. It appears from the proceedings dated 28.1.93 that the respondents' counsel filed a detailed account of the pension to which the applicant was entitled in two sheets which are at pages 78 and 79 of the paperbook, which show that taking the service from 3.11.1952 to 30.6.1966 and from 6.11.1987 to 31.12.1990, the total service is 16 years 9 months and 24 days, of which the qualifying service is 16 years, 7 months and 5 days. The applicant is treated as retired on 31.12.1990. The pension works out to Rs.249/- which also being less than the minimum, the minimum pension of Rs.375/- is made payable. It is not clear whether any order has been finally served on the applicant on the basis of those calculations or they are only an exercise on the directions of the Bench. They are quite different from the Annexure-1 and Annexure-2 filed with the reply dated 9.4.92. Be that as it may, these calculations also suffer from the same ~~vice~~ as the Annexure-1 and Annexure-2 to the main reply, in that they are not in conformity with the Supreme Court's orders.

14. The orders of the Supreme Court require fixation of pension as follows:-

(i) The respondents are required to give the benefit of 14 years' qualifying service to the applicant.

(ii) He should be treated as having retired on 30.6.1966.

52

(iii) His pension and gratuity should be determined with reference to the emoluments he had obtained upto 30.6.66 in accordance with the rules then in force, on the basis of qualifying service of 14 years ending on 30.6.1966.

(iv) The pension will be payable from 1.7.66. The gratuity is also due for payment immediately thereafter.

15. As a necessary consequence thereof, the applicant will be entitled to relief on pension, whenever it was sanctioned to other Government employees in accordance with the rules and to refixation of his pension w.e.f. 1.1.1986 on the basis of the Government's decisions on the Fourth Central Pay Commission's recommendations and other such benefits as are available to pensioners in general.

16. The applicant has also prayed for the retention of the Government quarter till the final determination of pension is made and for payment of rent at normal rates. No pleadings have been made in this regard. While seeking interim relief in para 9 of the O.A., the applicant states that only Rs.375/- as pension has been paid. All other dues are held up as two departmental enquiries have been initiated. Therefore, the aforesaid prayers have been made. The learned counsel for the applicant has drawn our attention to two decisions of the Supreme Court. The first is a decision in Violet Issac Vs. Union of India reported in 1991 (1) SCC 725. The petitioner therein was denied family pension on the death of her husband on the ground that the brother of the deceased had also made a claim for family pension and other pensionary dues, based on an alleged will left by the deceased. The Court held that the deceased could not have disposed of the right to family pension by will, because, family pension is payable to persons designated in the rules and not to others. The petitioner was also occupying the Railway quarter allotted to her husband after his death. In these circumstances, the Court found that the claim of the widow for family

KM

pension was found justified but did not grant her relief in respect of other disputed claims like gratuity, provident fund and other allowances. In the special circumstances, the Court observed that the Railway administration was free to evict the petitioner after arrears of family pension are paid to her and till then they will charge only a normal rent from her which was paid by the deceased when he was alive.

17. The other judgment of the Supreme Court is Phool Wati Vs. Union of India reported in AIR 1991 SC 470. The petitioner was the wife of an employee in the Government of India Printing Press, who died in harness. She sought compassionate employment for her son and permission to continue in the house allotted to her deceased husband. The prayer for an interim relief was rejected by the Central Administrative Tribunal. In the circumstances of the case, the Court directed Union of India to employ the second son of the petitioner on compassionate basis and the petitioner was also permitted to stay in the quarter where she was residing with the other members of the family.

18. We are of the view that these two decisions do not lay down a law that until the pensionary claims are settled, an employee or his spouse can retain the Government quarter and be liable to pay normal rent only. They have been rendered in the special circumstances of those cases.

19. The present case is entirely different. The applicant has already attained the age of 58 years on 31.12.1990 and, therefore, his employment in pursuance of the interim order in OA-858/87 came to an end. The O.A. itself was dismissed on 7.2.1991. The appeal in the Supreme Court was also disposed of on 12.8.91. The respondents have charged from him normal licence fee at

U

58

Rs.20/- per month upto April, 1991 (i.e. for four months after he attained 58 years) and at Rs.160/per month for the rent of four months on medical ground and from 9.9.1991 at Rs.1440/- per month as an unauthorised occupant.

20. The department has initiated two disciplinary cases one in respect of the wilful absence from 1.7.66 to 5.7.87 and another for creation of unhealthy atmosphere by using abusive unparliamentary language. It is stated in the reply that the commutation and gratuity are to be settled after final decision of the two disciplinary cases pending against the applicant in the department continued.

21. What is more important to note is that the applicant has been treated most leniently. Even though he remained absent from duty unauthorisedly from 1.7.66 no disciplinary proceedings were initiated within a reasonable time thereafter. The respondents could also have got him evicted from his house long back. For some inexplicable reason, this was not done. The applicant appears to have been in possession of a Government quarter and the only interim order passed by the Tribunal was the order dated 13.3.92 that he should not be evicted from the house, which order is still continuing. All these facts have to be taken into account in considering the applicant's prayers in this behalf.

22. Before we proceed further, we have to make a passing reference to the two disciplinary proceedings stated to be pending against him. One disciplinary enquiry is in respect of wilful absence from duty for 20 years from 1.7.66 to 5.11.87. In the other disciplinary enquiry, he is alleged to have created unhealthy atmosphere in the office by using abusive/unparliamentary language. The respondents contend that because of the pendency of these disciplinary enquiries the gratuity has not been paid and

U

15

only provisional pension has been paid. The applicant has not sought any relief in respect of these two proceedings and, therefore, we do not want to express any views about these proceedings. However, the fact, that in the Annexure-III order of the Supreme Court the applicant is held to have retired on 30.6.1966 after rendering 14 years of service, has to be noted and its implications understood in regard to these proceedings. We hope that the disciplinary authority will look into this matter.

23. We are of the view that the respondents are also partly responsible for the present state of affairs. We are also of the view that the enormous burden which would fall on the applicant if penal rent/damages at the rate of Rs.1440 per month is recovered from him could have been avoided, had they evicted him from the quarter about 20 years back. Secondly, when the interim order dated 13.3.92 was passed directing that the applicant should not be evicted, it was not clarified what rent he would be required to pay if, it was ultimately found that he had no right to continue to occupy the quarter, even if the pensionary claims had not been settled. If it had been clarified that he would have to pay the penal rent/damages assessed at Rs.1440/- per month, the applicant might have vacated the quarter at that time. Lastly, if the respondents had understood the full implication of the Supreme Court's order at Annexure-III, the final pensionary dues could have been settled long back. Therefore, while we hold firmly that, in the circumstances of the case, the applicant had no right to continue in the Government quarter after 1.9.1991, upto which date he was permitted by the authorities to continue in the quarter on concessional rent, the aforesaid circumstances cannot be lost sight of. What is more

(5b)

important is that the applicant is a poor pensioner entitled to get only the minimum pension. These factors have to be taken into account in issuing the orders/directions in this case.

24. For the foregoing reasons, we dispose of this O.A. with the following orders/directions:-

- i) The Anneuxre-I statement dated 8.4.92 showing the qualifying service rendered by the applicant and the Annexure-2 statement showing the calculations of the applicant's pension and gratuity filed by the respondents with their reply dated 8.4.92 are quashed.
- ii) Likewise, any order that might have been passed by the respondents in regard to fixation of the applicant's pension and gratuity on the basis of the statement filed at pages 78-79 of the paperbook are also quashed.
- iii) In so far as the pension of the applicant is concerned, the following directions are issued:-
 - a) The applicant should be treated as having retired on 30.6.1966 with a qualifying service of 14 years and he should be paid proportionate pension in accordance with the rules then in force, taking into account the emoluments upto 30.6.66. Pension payable to him from 1.7.66 shall be so computed and if it is less than ~~any~~ ^{the} minimum pension, if any, fixed under the relevant rules, the applicant shall be granted such minimum pension. The applicant shall also be eligible for any dearness relief/ dearness allowance on pension, as is admissible to pensioners in general, subject to the conditions, if any, prescribed by the rules/instructions. The pension payable shall be ^{in accordance with the orders of Govt.} refixed from 1.1.1986 on the Fourth Pay Commission's recommendations.

(53)

b) During the period from 6.11.1987 to 31.12.90 the applicant was on duty with respondent No.2, in pursuance of the interim order dated 25.9.87 in OA-858/87. A question will arise as to how the pension and dearness relief on pension for the period should be dealt with, as he is also employed by respondent No.2. This is a matter which should be decided by the second respondent, in accordance with law and for this purpose, the applicant may send a representation to the second respondent within one month from the date of receipt of this order, which shall be considered by the second respondent.

c) The death-cum-retirement gratuity, if any, due to him on his retirement on 30.6.66 should also be computed in accordance with the rules then in force on the basis of the emoluments upto the date of his retirement.

iv) In regard to the prayers (iii) and (iv) extracted in para 3 supra, the following directions are issued:-

a) The rent charged by the respondents from the applicant upto August, 1991, as shown in the schedule to the notice dated 31.10.91 under the Public Premises (Eviction of Unauthorised) Occupants) Act, 1971 filed as Annexure-4 with the application is quite reasonable and does not require any modification.

b) A rent of Rs.160/- per month has been charged from May, 1991 to August, 1991 on medical grounds. Considering this circumstance and all other aspects of the case to which we have referred earlier, we are of the view that a rent of Rs.240/- per mensem would be a reasonable

58

amount to be charged from 1st September, 1991, instead of Rs.1440/- per month charged in the schedule (Annexure-IV) referred to above. We order accordingly, subject to the condition that the applicant vacates the quarter within one month from the date of this order, during which period the respondents shall not evict the applicant.

- c) If the applicant does not vacate the quarter as stipulated in (b) above, the respondents shall be at liberty to recover rent at the penal rate, as shown in the schedule the Annexure-IV, referred to above, for the period from 1.9.1991 and they shall also be at liberty to evict him in accordance with law.
- v) The respondents are directed to pay the arrears of pension subject to the directions contained in para (iii) (b) above, and (viii) below, as distinct from the dearness relief/dearness allowance, if any, payable on the pension, in respect of the period from 1.7.66 to 31.10.93.
- vi) Other dues, that remain to be paid in accordance with this order viz. gratuity and dearness relief/pension, shall be paid to the applicant within the same period as stipulated in (v) above or within one month from the date the applicant vacates the Government quarter, whichever is later. The respondents are at liberty to set off these dues against the amount payable as rent in accordance with the directions in (iii) above and pay only the balance to the applicant.

50

vii) Pension for the month of November 1993 and, thereafter shall be paid in the same manner as it is paid to other pensioners after the amount is computed. Until then, the respondents shall pay Rs.375/- as provisional pension, as also the dearness relief/allowance thereon, for every month commencing from the ~~pension for~~ the month of November, 1993. The provisional pension for November, 1993 shall be paid within one month from the date of receipt of this order and dearness relief/allowance shall be paid to the applicant.

viii) The respondents are directed to pay the applicant provisionally Rs.5,000/- (Rupees five thousand)only) within thirty days from the date of this order subject to adjustment of this amount against the dues payable to the applicant in accordance with (v) supra.

ix) In respect of payments made to the applicant in accordance with these directions the second respondent shall furnish to the applicant a full statement of the calculations of the amounts due to him and the amounts recoverable from him and adjusted, within a period of one month from the date the final payment is made. In case no payment is made on or before the dates indicated in this order, the respondents shall pay interest on the amounts involved at the rate of 12% per annum from the date of this order till the amount is actually paid.

25. The O.A. is disposed of, as above, with no order as to costs.

(B.S. HEGDE)

MEMBER(J)

16.11.93.

San.
121193

(N.V. KRISHNAN)

VICE-CHAIRMAN

16.11.93.

16.11.93