

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * * *

O.A.No.984/91

DATE OF DECISION 28.11.91

SHRI A.B.MALHOTRA

-- APPLICANT

VS

UNION OF INDIA & ORS.

-- RESPONDENTS

CORAM

HON'BLE SHRI D.K.CHAKRAVORTY, MEMBER (A)

HON'BLE SHRI J.P.SHARMA, MEMBER (J)

APPLICANT IN PERSON

FOR THE RESPONDENTS

SHRI M.L.VERMA, COUNSEL

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

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P.SHARMA, MEMBER (J))

The applicant retired on 30-9-1977 as C.A.S.O. while he joined on 4-2-1948 in the Ministry of Defence. Earlier to this the applicant was an employee of U.P. Government where he was working in Criminal Investigation

Department (C.I.D.) from 26-2-1942. He applied through proper channel to the Defence Department for service and after resigning from the U.P. Government, C.I.D. on 3-2-1948, he joined the service as stated above in Ministry of Defence on 4-2-1948.

2. The grievance of the applicant is that he has been awarded pension by the respondents ignoring the period of his service rendered by him with the Government of U.P. The applicant has prayed that the respondents be directed to grant the applicant revised pensionary benefits alongwith the gratuity and other terminal benefits considering the services rendered with the Government of U.P. in the C.I.D. from 26-2-1942 to 3-2-1948.

3. The applicant appeared in person. We heard Shri M.L.Verma on behalf of the respondents. It is evident from the O.M. issued from the Ministry of Home Affairs No.3(20) Pen(A)/79 dated 21-3-1982 which has laid down the guidelines regarding the proportionate liabilities of the State and Central Government for considering the pension. Annexure H to the order dated 31-3-1982 lays down as follows:-

"It has since been decided in consultation with the State Govts. that proportionate pensionary liability

in respect of temporary service rendered under the Central Govt and State Govts., to the extent such service would have qualified for grant of pension under the rules of the respective Govt., will be shared by the governments concerned on a serviceshare basis so that the Govt. servants are allowed the benefits of counting their qualifying service both under the Central Govt. and the State Government for grant of pension by the Govt. from where they eventually retire".

4. The case of the applicant is that in view of this Memo the applicant is entitled to get the services rendered from 26-2-1942 to 3-2-1948 under the U.P. Government reckoned for pension purposes. The applicant was informed by the letter dated 19-4-1990 that the services rendered under U.P. Government for the period from 26-2-1942 to 3-2-1948 was not allowed to be counted towards services as Defence civilian, as the same is not covered under the provision of Department of Personnel and Administrative Reforms' letter dated 31-3-1982 as the aforesaid letter comes into force w.e.f. the date of issue i.e. from 31-3-1982 and the applicant retired as C.A.S.O. w.e.f. 30-9-1977. However the contention of the applicant is that the reply given

by the respondents cannot be accepted as correct in view of the decision of the Hon'ble Supreme Court in W.P.No. 3739/85 in the case of R.L.Marwaha Vs. Union of India & Ors. 1987(2) Scair page 245. The Hon'ble Supreme Court in this case held that the cut off date of issue of such circulars is unreasonable and creates unwarranted classification on the basis of date of retirement as unconstitutional which is violative under Article 14 of Constitution of India. The applicant has also referred to the decision of the Principal Bench in the case of S.K.Kashyap Vs. Union of India in O.A.No.365/88 decided on 3-10-1989. Shri S.K.Kashyap also served in C.I.D. under the U.P. Government w.e.f. 24-7-1948 to 13-4-1954 and then served under the Central Government (C.G.D.A.) and retired on 31-12-1981. The Principal Bench allowed him the benefits of the aforesaid circulars of March, 1982.

5. The learned counsel for the respondents argued that the present application is barred by limitation and cited a number of authorities* in that regard. The objection

1.S.S.Rathod Vs. U.O.I. 1989 (11) ATC(SC) 913
2.Baidya Nath Mandal Vs.U O I 1991(1) SLJ(Cal)491
3.Raghu Nath Parsad Vs.Chairman UPSC 1991(1) CSJ(Gauhati)189
4.U.O.I. Vs. Labeeban 1989(4)SLJ (Abd)890

(10)

of limitation of course has some substance in the present case. The applicant has been filed on 22-4-1991. The judgement in the case of Kashyap was delivered in 1989 and in the case of Marwaha by the Hon'ble Supreme Court was delivered in the year 1987. The applicant has not come within limitation. However, a liberal view has to be taken in the matter of limitation particularly in a case where the person has come for the redress of the grievances regarding grant of pensionary benefits. In the case of Bankim Chandar Vs. Union of India reported in 1991 (16) A.T.C. Page 658 the Guawahati of C.A.T. held that the plea of respondents to disallow the rightful claim by holding the impugned order on the technical ground of limitation cannot be allowed. The bar of limitation, therefore, creates valuable right in favour of the respondents but at the same time on the principle of natural justice the legitimate claims within limitation cannot be disallowed. The grant of pension has a recurring cause of action which shall continue to recur in favour of the aggrieved person every month till death. Pension and gratuity are no more a bounty or charity on the eve of his retirement under Rule 49 of C.C.S. Pension Rule 1972 but it is right of a person as held by the Hon'ble Supreme Court in State of Kerala Vs. Padmanabhan Nair A.I.R. 1985 SC. page 356. Further in the case of P.L.Shah Vs. Union of India-A.I.R 1989 SC p-985, in which it has been held that "It was open to the Tribunal

to fix a date within a period of said three years from which the appellant should be paid the subsistence allowance at the revised rate, of course, having due regard to the date of application also." The hon'ble Supreme Court held that so much of the claim of a person which can come within limitation should not be refused to him on the technical ground of limitation. This was a case where claim of subsistence allowance ^{for} / the suspension period even beyond three years but the same was disallowed on the ground that the Tribunal cannot grant relief earlier to 1982. The Supreme Court allowed modifying the judgement of the Tribunal the claim of subsistence allowance of the period which comes within three years.

6. The learned counsel could not show anything on the merit that the service rendered by the applicant under U.P. Government cannot be counted. The learned counsel for the respondents referred to Para 4.1 of the reply that no such letter is available in the service book of the applicant that he applied to the Central Government for service through proper channel through the Government of U.P. The contention of the respondents is that the Controller of Defence Accounts did not admit the service rendered by the applicant under U.P. Government in C.I.D. vide Sub-Rule (3) of Rule 14 of C.C.S. (Pension) Rules, 1972. In this case the applicant served the U.P. Government till 3-4-48

kp

and immediately he joined on 4-2-1948 with the Central Government. In the reply sent by the respondents to the applicant dated 19-4-1990 page 10 of the paper book does not cite that the applicant did not apply for his service in the Central Government through proper channel. The respondents have not filed any record to show that the entries in the service record of the applicant did not show that he joined the service after being relieved from the U.P. Government. The applicant has averred clearly in the application that he has served with the U.P. Government from 1942 to February, 1948 and from 4-2-1948 he joined the Ministry of Defence.

7. In view of the above facts the application is partly liable to be allowed. The claim of the applicant for grant of pension was also considered by the Ministry of Defence and in the letter sent to C.G.D.A., C.D.A. Pension, Allahabad the case of the applicant was forwarded where it is stated that the case is covered by the judgement (quoted above) of the Principal Bench as well as by the letter issued by the Department of Personnel and Administrative Reforms.

8. The applicant has of course come quite late in 1991

and he made the first representation on 14-12-1989
so the applicant at the most can be granted monetary
benefits from this date i.e. 14-12-1989 which will
bring the matter under limitation by virtue of the
letter of reply given by the respondents, D.P. Mandal,
Joint Controller, Defence Accounts Pension dated
9-4-1990.

9. The applicant is, therefore partly allowed with the
following directions.

(i) The respondents are directed to count
the services of the applicant for the purpose
of pensionary benefits from 26-2-1942 to 3-2-1948
and fix the ~~revised~~ pension of the applicant after
counting the service rendered by him in the Ministry
of Defence from 4-2-1948 till 30-9-1977.

(ii) The applicant, however will get a notional
fixation of revised pension but he may be paid
monetary benefits only from 14.12.89 and shall also
be paid all arrears of pension so enhanced/ His
claim regarding grant of gratuity/ and other benefits
on the basis of Revised Pension

are disallowed. In the circumstances the parties
shall bear their own costs.

J.P. Sharma
(J.P. SHARMA)

MEMBER (J)

28.11.51

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 28/11/1951