

CENTRAL ADMINISTRATIVE TRIBUNAL
PERINCIPAL BENCH

OA No. 928/2004

New Delhi this the 13 th day of December, 2005

Hon'ble Mr. V.K.Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Rajinder Singh,
B-238, Lok Vihar,
Pitampura,
New Delhi-110034.

.... Applicant.

(By Advocate Shri S.K. Bansal)

VERSUS

1. The Director-General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi-110 011.
2. The Chief Controller of Accounts,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110 011.
3. The Secretary (Pension),
Department of Pension and
Pensioner's Welfare,
Lok Nayak Bhawan, IIIrd Floor,
Delhi-110 003.
4. The Pay and Accounts Officer,
Central Public Works Department,
North Zone, R.K. Puram,
New Delhi. Respondents.

(By Advocate Shri Harinath Ram)

O R D E R

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A. applicant has sought quashing of the order dated 22.4.2003 (page 16) with a further direction to the respondents to release the reduced/withheld pensionary benefits along with 18% simple interest from the date they were applicable upto this day and revise it accordingly by giving him benefit of 5 years in qualifying service for pension and pensioner's welfare. He has also prayed that respondents be directed to release one day salary, which has been deducted illegally along with upto date interest.

2. It is stated by the applicant that he was appointed in service w.e.f. 12.12.1957. He sought voluntary retirement after serving the department for a period of 26 years and 6 months. His request was accepted and he was allowed to retire voluntarily under Rule 48-A of the CCS (Pension) Rules, 1972 w.e.f. 01.09.1983 (page 38). After the retirement, his pension was fixed at Rs.554/- p.m. w.e.f. 01.09.1983. To his utter surprise, without giving him any show cause notice or opportunity of hearing, his pension was reduced from Rs.554/- to Rs.505/- w.e.f. 01.09.1983 vide order dated 27.5.1986 i.e. after a lapse of 2 years, 2 months and 2 days (page 42). As a result of order dated 27.5.1986, respondents illegally recovered the amount from applicant, which reduced his gratuity and other consequential benefits as well. He requested the authorities to fix his pension @ Rs.554/- p.m. and return his arrears of the deducted amount of pension with interest and further refix his pension correctly after giving him benefit of 5 years in total qualifying service but his request was not accepted.

3. After 5th Pay Commission, his pension was fixed at Rs.3254/- p.m whereas, according to the applicant, it should have been fixed at Rs.3675/- p.m. He, therefore, issued a legal notice dated 5.12.2002 but the same was rejected vide letter dated 22.4.2003. Therefore, he had no other option but to file the present O.A.

4. O.A. is opposed by the respondents, who have submitted that this O.A. is barred by limitation as cause of action, if any, arose in the year 1986 whereas the present O.A. has been filed in the year 2004, therefore, it is liable to be dismissed on this ground alone. On merits, they have submitted that at the time of retirement, his pension was fixed at Rs.554/- after giving him weightage of 2 years, 4 months and 1 day, taking into account the total service had he worked upto the age of 55 years but his pension had to be revised by taking into consideration qualifying service of 26 years 6 months without giving him the benefit of weightage in qualifying service, as the same was not admissible to him under Rule 48-A of the CCS (Pension) Rules read with FR 56 (K).

5. They have further submitted that his pension was revised in the year 1986 but applicant did not raise any objection at that time or even at the time when recoveries were made. He represented after over a period of 12 years vide

letter dated 16.12.1998 for allowing weightage. His representation was rejected vide letters dated 6.5.1999, 22.5.2000 and 25.9.2000. The last order dated 22.4.2003 was reply to his legal notice, therefore, it cannot give him any fresh cause of action to file the present O.A. They have further submitted that the pensionary benefits were fixed inadvertently by giving him benefit of weightage in qualifying service even though he was not entitled for it in law and concurrence of DOP&T has also been obtained who have ratified the action of the Department in rectifying the error. Even otherwise, recovery was made as per applicant's own declaration given in pension papers wherein he had stated as follows:

"I hereby accept the condition that should the amount of gratuity as authorized by the Accountant General be afterwards found to be in excess of the amount to which I am entitled under the rules, I will refund such excess".

They have explained that as per proviso below Rule 5 (2) of then CCS (Pension) Rules, in case a Government servant retires voluntarily under Rule 48 or Rule 48-A, as the case may be, the date of retirement shall be treated as a non-working day. Since the date of voluntary retirement is a non-working day, the recovery has been accordingly effected i.e. for 1.9.1983 being the date of retirement. They have thus submitted that there is no merit in the O.A. The same may accordingly be dismissed.

6. We have heard both the counsel and perused the pleadings as well. Admittedly, applicant was allowed to retire voluntarily under Rule 48-A of the CCS (Pension) Rules, 1972 w.e.f. 01.09.1983 (page 38). It is also admitted position that he was granted pension @ Rs.554/- p.m. w.e.f. 01.09.1983 vide PPO dated 27.3.1984 (page 39). However, his pension was reduced to Rs.505/- p.m. vide letter dated 27.5.1986 (page 42). In this letter, apart from revising his pension, it was directed to recover the excess paid amount from the applicant after recalculating his retrial benefits. Therefore, if applicant was aggrieved, he ought to have challenged the order dated 27.5.1986 at that relevant time. However, no such step was taken by the applicant. Accordingly, a revised PPO was issued, deductions were made from the applicant's pension plus DA and thereafter his pension was being paid to the applicant @ Rs.505/- p.m. which was revised w.e.f. 01.01.1996 after the 5th Pay Commission as well.

7. It is correct that applicant gave representations but his representations were also rejected as back as on 6.5.1999, 22.5.2000 and 25.9.2000, as is evident from the reply given by the respondents. Even at that stage, applicant did not challenge those orders. Finally, applicant gave his legal notice wherein he had requested the authorities to fix his pension @ Rs.554/- p.m. w.e.f. 01.09.1983 by giving him weightage of service for the purpose of calculating his total qualifying service. It was this request, which was rejected by the respondents by stating that his case was to be governed by Rule 48-A (3) and not by Rule 48-B whereas at the time of calculating his pension his case was wrongly considered under Rule 48-B. Therefore, the issue is whether applicant would be covered under Rule 48-A (3) or Rule 48-B of the CCS (Pension) Rules, 1972. Since this case deals with pensionary dispute, we would not like to dismiss it being barred by limitation and would like to decide it on merits.

8. It is submitted by the counsel for the applicant that his pension could not have been reduced without putting him on notice and as per Rule 70 of the CCS (Pension) Rules, his pension could not have been revised without taking the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorization of pension. In normal course, when pay or pension is refixed to the disadvantage of employee, without giving notice to the person concerned, generally the orders are quashed by giving liberty to the respondents to pass necessary orders after giving opportunity to the person concerned and after hearing or taking representation from the said person. However, in the instant case, there has already been a delay of about 19 years. Therefore, we do not wish to remit this matter back to the authorities as it would only further delay the matter. Moreover, ultimately we have to see whether applicant was to be governed under Rule 48-A(3) or Rule 48-B of the CCS (Pension) Rules. Since applicant's pension was already reduced as back as in 1986 and recoveries were also made from him around that time, which were neither objected to by the applicant nor challenged by him. On the contrary, he had given a declaration to the effect that in case amount of gratuity is afterwards found to be in excess of the amount to which he is entitled under the Rules, he shall refund such excess. Therefore, at this

belated stage, we would not like to quash those orders only on the ground that they were issued without following due process of law or by not giving any opportunity to the applicant. We say so because even otherwise we find the action was taken by the respondents to carry out correction in accordance with rules. For this purpose, the power is very much given to the respondents under Rule 70 but the only requirement was that in case the clerical error was detected after a period of two years from the date of authorization of pension, the pension could not have been revised without the concurrence of DOPT and Administrative Reforms. It is correct initially concurrence was not taken but subsequently respondents have taken ex-post facto concurrence of DOPT, which is evident from Annexure-III annexed with the counter by the respondents, therefore, as on date that condition also stands fulfilled.

9. The next issue is whether applicant can claim benefit under Rule 48-B of the CCS (Pension) Rules which came into effect from 10.9.1983 only whereas applicant sought voluntary retirement from service from 01.09.1983. Since Rule 48-B came into existence only w.e.f. 10.9.1983, naturally it could not have been applied in case of applicant, who was allowed to retire voluntarily w.e.f. 1.9.1983. It is thus clear that applicant was given the benefit of adding years to qualifying service under Rule 48-B of the CCS (Pension) Rules. Immediately after the error came into notice, it was corrected in 1986. Accordingly, revised PPO was issued. It is seen DOPT had also stated that rectifying the error was in order and the request of applicant cannot be accepted.

10. We have seen the rules ourselves and find that Rule 48-B was to take effect from 10.9.1983 whereas applicant had retired before that date i.e. 01.09.1983. Therefore, naturally he could not have been given the advantage of adding to qualify service on voluntary retirement, as stipulated under Rule 48-B. It is thus clear that applicant was to be governed by Rule 48-A (3) of the CCS (Pension) Rules as it then was, which for ready reference reads as under:

"48-A. Retirement on completion of 20 years' qualifying service.

(1) and (2) x x x x x

(3) The qualifying service as on the date of intended retirement of the Government servant retiring under this rule shall be increased by a period not exceeding five years, so however that the total qualifying

service rendered by the Government servant does not in any case exceed thirty years.

Provided that the total qualifying service after allowing the increase under this sub-rule shall not exceed the qualifying service which the Government servant would have had, if he had retired voluntarily at the lowest age limit for voluntary retirement prescribed under clause (k) of Rule 56 of the Fundamental Rules or Clause (i) of Article 459 of the Civil Service Regulations".

11. As per Rule 56 (k), any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he is Class I or Class II service or post, and had entered Government service before attaining the age of thirty-five years and in all other cases after he has attained the age of fifty-five years, meaning thereby that he could not have been given the benefit of adding years to his qualifying service beyond fifty years if he was holding Class-II post. Respondents have explained that applicant was holding Group 'B'/Class-II post i.e. Assistant Surveyor of Works, therefore, in his case, the minimum age limit for voluntary retirement would be fifty years which he had already attained on 31.12.1980 since his date of birth is 1.1.1931. As such, he was not entitled to get any further increase or weightage in qualifying service as per proviso to Rule 48-A (3) read with Rule 56 (k). These facts have been stated categorically by respondents in para 8 of their counter reply but they have not been rebutted by the applicant in his rejoinder. Therefore, in law these facts are deemed to have been accepted by applicant. It is thus clear that applicant was not entitled to get any advantage of adding in years to his qualifying service, which was wrongly done by the respondents at the time of fixing his pension at the time of his retirement. On coming to know about the error, the same was rectified, of course, initially concurrence of the DOPT was not taken by the respondents but they rectified the mistake by taking ex-post facto concurrence from the DOPT also. Therefore, that lacuna also stands rectified.

12. We have already explained above that his case was to be governed by Rule 48-A (3) and since he had already completed fifty years in the year 1980 i.e. before he asked for his voluntary retirement, he was not entitled to get advantage of adding more years to his qualifying service.

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9. The next issue is whether applicant can claim benefit under Rule 48-B of the CCS (Pension) Rules which came into effect from 10.9.1983 only whereas applicant sought voluntary retirement from service from 01.09.1983. Since Rule 48-B came into existence only w.e.f. 10.9.1983, naturally it could not have been applied in case of applicant, who was allowed to retire voluntarily w.e.f. 1.9.1983. It is thus clear that applicant was given the benefit of adding years to qualifying service under Rule 48-B of the CCS (Pension) Rules. Immediately after the error came into notice, it was corrected in 1986. Accordingly, revised PPO was issued. It is seen DOPT had also stated that rectifying the error was in order and the request of applicant cannot be accepted.

10. We have seen the rules ourselves and find that Rule 48-B was to take effect from 10.9.1983 whereas applicant had retired before that date i.e. 01.09.1983. Therefore, naturally he could not have been given the advantage of adding to qualify service on voluntary retirement, as stipulated under Rule 48-B. It is thus clear that applicant was to be governed by Rule 48-A (3) of the CCS (Pension) Rules as it then was, which for ready reference reads as under:

"48-A. Retirement on completion of 20 years' qualifying service.

(1) and (2) x x x x x

(3) The qualifying service as on the date of intended retirement of the Government servant retiring under this rule shall be increased by a period not exceeding five years, so however that the total qualifying

service rendered by the Government servant does not in any case exceed thirty years.

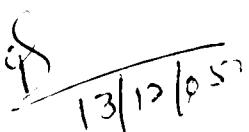
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11. As per Rule 56 (k), any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he is Class I or Class II service or post, and had entered Government service before attaining the age of thirty-five years and in all other cases after he has attained the age of fifty-five years, meaning thereby that he could not have been given the benefit of adding years to his qualifying service beyond fifty years if he was holding Class-II post. Respondents have explained that applicant was holding Group 'B'/Class-II post i.e. Assistant Surveyor of Works, therefore, in his case, the minimum age limit for voluntary retirement would be fifty years which he had already attained on 31.12.1980 since his date of birth is 1.1.1931. As such, he was not entitled to get any further increase or weightage in qualifying service as per proviso to Rule 48-A (3) read with Rule 56 (k). These facts have been stated categorically by respondents in para 8 of their counter reply but they have not been rebutted by the applicant in his rejoinder. Therefore, in law these facts are deemed to have been accepted by applicant. It is thus clear that applicant was not entitled to get any advantage of adding in years to his qualifying service, which was wrongly done by the respondents at the time of fixing his pension at the time of his retirement. On coming to know about the error, the same was rectified, of course, initially concurrence of the DOPT was not taken by the respondents but they rectified the mistake by taking ex-post facto concurrence from the DOPT also. Therefore, that lacuna also stands rectified.

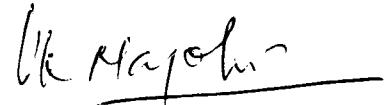
12. We have already explained above that his case was to be governed by Rule 48-A (3) and since he had already completed fifty years in the year 1980 i.e. before he asked for his voluntary retirement, he was not entitled to get advantage of adding more years to his qualifying service.

n/s

13. In view of the above discussion, we find no merit in the O.A. The same is accordingly dismissed. No order as to costs.


13/12/95

(Mrs. Meera Chhibber)
Member (J)


V.K. Majotra
Vice Chairman(A)

'SRD'