

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(12)

OA 3090/92.

New Delhi, this the 05th day of April, 1994.

SHRI J.P.SHARMA, MEMBER(J).

SHRI S.R.ADIGE, MEMBER(A).

Shri D.N.Pandey,
S/o Late Shri H.T.Pandey,
formerly Administrative Officer,
Films Division (M. of I. & B.),
(RETIRED), resident of K-1/67, E.P.D.P.Colony,
Chittaranjan Park, New Delhi. ...Applicant

By advocate : Shri T.C.Agarwal.

VERSUS

1. UNION OF INDIA, through
Secretary, Ministry of Information & Broadcasting,
Shastri Bhavan, New Delhi.
2. Chief Producer, Films Division,
24, Dr. Deshmukh Road, Bombay-26. ...Respondents

By advocate : Shri N.S.Mehta.

O R D E R (ORAL)

SHRI J.P.SHARMA: *Member(J)*

The applicant earlier filed OA 393/89 before the Principal Bench after he superannuated as Administrative Officer in the Films Division of Ministry of Information and Broadcasting. In that original application, the applicant has prayed that his service which he has rendered as a Central Govt. employee for the period from 17.1.55 to 8.3.56 be counted as qualifying service for the grant of pension and that relief was allowed to him by the judgment delivered on 6.3.91. In this present application, the applicant has assailed the order of 7.5.92 (Annexure A-IV) by which his request for counting the earlier service which he has rendered with the State Govt. for the period from 13.6.49 to 7.10.54 was not treated as qualifying service on account of the fact that in the earlier application,

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the applicant did not pray for the grant of that relief and that he has approached the department more than 3 years after his retirement(i.e., 31.3.88). The applicant has prayed for the grant of the relief that the service rendered by the applicant earlier to joining the Central Government in the State Government from 13.6.49 to 7.10.54 be counted as qualifying service and revised pension order be issued with all other benefits.

2. The respondents on issue of notice opposed the grant of the relief on the ground that the present application is barred by the principles of constructive res judicata. On merits, it is stated that the verification of the earlier service of the applicant in the State Government was never supplied by the applicant nor it could be obtained from the concerned State and it is also not exhibited in the service record of the applicant maintained while he was serving in the Central Government. The applicant was an administrative officer and because of his status, he was expected to know all these facts. The respondents, however, had not denied the fact that under Govt. of India decision no.5 under rule 14 of the Pension Rules, a service rendered by an employee earlier to joining the Central service with the State Government if it is without interruption can be treated as a qualifying service under rule 28 of the CCS (Pension) Rules, 1972.

3. We have heard the learned counsel for the parties at length and perused the records. The learned counsel for the applicant has placed reliance on a decision of the Hon'ble Supreme Court reported in 1994 (26) ATC p.448 - S.NAGRAJ AND OTHERS vs. STATE OF KARNATAKA AND ANOTHER, in which in para 18, the Hon'ble Supreme Court has observed as follows :-

" 18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of

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law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction excercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue. "

4. In view of the above, the learned counsel for the applicant argued that though it cannot be disputed that a person who assailed all his grievance one at a time can only reserve any of such grievances with the liberty of the court or Tribunal if the cause of action had already existed for all such grievance when a judicial review is sought earlier. However, in the present case, pension accrues on monthly basis and it can be said to be a running cause of action. It may be that the applicant may not have a claim for arrears but at the same time there is a provision in the form of instructions made by the Government of India itself, then mere delay by the aggrieved party should not by itself be taken as barring for the benefit particularly in the case of a retired government servant who has served the government and has retired honourably. The ~~contenction~~ pension is the outcome by product of the service rendered by

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a government servant during all the years he was in the employment. It is a sort of earning which cannot be ~~likely to stop~~ ^{lightly denied} to such an employee. Order ² to rule 2 CPC is not specifically ~~clear~~ ^{applicable} in the procedure which is followed in the Tribunal. The principles of natural justice have also their part to play. When a fact is admitted by the respondents that the service rendered by an employee under the State can be counted as qualifying service for ultimate grant of pension, if such an employee retires from the Central Government. In view of these facts, we find a case that the respondents should re-consider the case of the applicant in the light of the above observations and pass a speaking order. The applicant is short of one year or so of the maximum qualifying service which can be granted through the applicant has rendered about 5 years service in the State Government.

5. The application is, therefore, disposed of accordingly and the respondents to consider the matter of the applicant within a period of six months from the date of receipt of a copy of this Order. No costs.

Kalra
(S.R.ADIGE)

MEMBER(A)

/KALRA/

Sharma
(J.P.SHARMA)

MEMBER(J)