

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 30TH DAY OF JANUARY, 2003

Original Application No.532 of 1996

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Jivan Shukla, a/a 66 years
Son of Late Sri V.S.Shukla
R/o Kannauj Mohalla Gwäl Maidān
district Fārrukhabad.

... Applicant

(By Advs: S/Shri G.P.Agrawal/S.D.Kapoor)

Versus

1. Union of India through Controller General, Vth West Block R.K.Puram, New Delhi.
2. Chief Controller of Accounts (Factories), 10-A, Auckland Road, Calcutta 700 001.
3. Chief Controller of Defence Accounts(Pensions), Allahabad.

... Respondents

(By Adv: Shri Satish Mandhyān)

O R D E R (Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this Original Application u/s 19 of A.T.Act 1985 applicant has challenged the order dated 10.1.1996(Annexure 1) by which an earlier decision communicated to the applicant vide order No.324 dated 28.2.1994 has been reviewed and the applicant has been held not entitled for pensionary benefits.

The facts in short, giving rise to this application are that Jivan shukla was appointed as L.D.C on 21.10.1955 in the office of Controller of Defence Account(in short C.D.A(Pension), Allahabad. He was

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promoted subsequently as an Auditor. On 10.9.1974, applicant gave an application requesting the respondents for accepting his voluntary retirement w.e.f. 1.11.1975. In this letter applicant also prayed for grant of pension and gratuity for 20 years of service. The request of the applicant for voluntary retirement was accepted by order dated 15.11.1979(Annexure 5) w.e.f. 1.11.1975. This order also said that applicant shall not be entitled to any pensionary benefits for the period of service rendered in D.A.D. At this place it may be mentioned that as applicant had joined service on 21.10.1955, he had completed 20 years service on 1.11.1975 the date from which his resignation/voluntary retirement was accepted. Applicant continued to represent with the respondents to treat it as voluntary retirement and for grant of pension. By order dated 12/19.11.1993 the request of the applicant was accepted. The order communicated to the applicant was to the following effect:

"Voluntary retirement w.e.f. 1.11.1975 of Shri Jivan Shukla, Ex-Auditor A/C No. 8287350 who was serving under you has been accepted by CCDA, New Delhi as a special case with the stipulation that the same should not be quoted as a precedent case"

The applicant was required to submit papers for receiving pensionary benefits. In pursuance of this order it is not disputed that the applicant submitted papers. However, pension was not granted though applicant continued to request ^{for the same} from time to time. Ultimately, the impugned order dated 10.1.1996 was passed which is to the following effect: The relevant part of the order is being reproduced below:

"On receipt of your appeal, your case Part II Office Order No.324 dated 28.2.1994 was published for voluntary retirement. On review by the Competent authority it has been observed that on the date of your resignation i.e. 1.11.1975 the scheme for voluntary retirement for Govt. servants had not been introduced by the Govt. As you had rendered 20 years and 5 days service as on 1.11.1975 after close review of the order on the subject the competent authority has held that there is no provision in the Govt. rules and orders under which your case could be considered for voluntary retirement and for grant of pensionary benefits under CCS(Pension) Rules 1972. Accordingly, your request for voluntary retirement cannot be accepted under extant order."

Aggrieved by the aforesaid order applicant has approached this Tribunal and has prayed to quash the order with a direction to respondents to pay the entire retiral benefits alongwith 24% interest and also the cost of the litigation.

Resisting the claim of the applicant respondents have filed counter reply wherein it has been stated that as the applicant voluntarily retired on 1.11.1975, and the pension scheme on retirement on completion of 20 years qualifying service was introduced w.e.f. 28.11.1978 by inserting Rule 48-A of CCS(Pension) Rule 1972, the applicant is not entitled for the benefit and the order was rightly reviewed and does not suffer from any error of law.

The learned counsel for the applicant has challenged the impugned order on the ground that by earlier order dated 12/19.11.1993 (Annexure 7) a benefit was granted to the applicant which could not be taken away by subsequent order dated 10.1.1996 by reviewing the earlier order without giving opportunity of hearing to the applicant. It is submitted that the impugned order effected the valuable right of the applicant and it could not be passed without giving opportunity of hearing and show cause. The order is violative of principles of natural justice and is liable to be

quashed on this ground alone. It is further submitted that a close reading of Rule 48-A it is clear that it was not applicable only to the voluntary retirement after 28.11.1978 but it covered the earlier cases also and the claim of the applicant was rightly accepted by order dated 12/19.11.1993. The view taken by the respondents that the provision had only a prospective application is based on misconception and the order is liable to be quashed. The learned counsel for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in case of 'D.S.Nakara & Ors Vs. Union Of India', AIR 1983 Supreme Court Pg 130. Counsel for the applicant has also submitted that under Rule 88 of CCS(Pension) Rules 1972, respondents have power to grant relaxation in hard cases and as the claim of the applicant was accepted by order dated 12/19.11.1993, The decision was taken in favour of applicant by granting relaxation. Reliance has been placed in the language used in the order which says that 'has been accepted by CCDA, New Delhi as a special case with the stipulation that same should not be quoted as precedent case'. The submission is that the relaxation was granted and the view taken in the impugned order that applicant was not entitled for the benefit is not correct.

Lastly, it has been submitted that as the applicant has been denied the benefit of pension on the basis of this illegal and arbitrary order, respondents may be directed to pay the entire arrears of pension with interest.

Learned counsel for the respondents, on the other hand, submitted that from a plain reading of the provisions contained in Rule 48-A, it is clear that it has prospective application and the claim of the applicant has rightly been rejected. ^{He retired} ~~from~~ ^{only} 1.11.1975, whereas the Rule 48-A came into force on 28.11.1978.

We have carefully considered the submissions made by the learned counsel for the parties. We do not find that there is much dispute ~~on~~ on fact. The dates relevant for the controversy are that applicant wished to retire voluntarily from 1.11.1975, which was accepted. It is also true that Rule 48-A came into force on 28.11.1978 when it was inserted by notification No.7(2)-EV(A)/73. The important question for determination, however, is whether the provisions contained in Rule 48-A(1) are prospective or they cover those cases also where the government servant after completing 20 years qualifying service retired from service before 28.11.1978. ^{The relevant parts of} Rule 48-A is being reproduced below:-

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

- (1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service. Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-
- (i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes.
 - (ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) On a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

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3. X XX X X X X X X X X X

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3(b) x x x x x x x x x x x x

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6. This rule shall not apply to a Government servant who-

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement"

From the close reading of the language used in Rule 48-A it is clear that it does not restrict its application to the retirements taking on or after 28.11.1978. The words 'at any time' after a government servant has completed 20 years qualifying service, are very relevant and it appears that the provision is of declaratory nature and it provides that any Govt servant who after completing 20 years qualifying service retires at any time by a notice shall be entitled for the benefit of pension. In our opinion, the request of the applicant was rightly accepted by order dated 12/19.11.1993. There is no dispute, that there is a presumption that legislature does not intend, what is unjust. From the close reading of provisions contained in Rule 48-A the legislative intent is very clear that all government servant who retired after completing 20 years qualifying service were covered by the provision, as categories of the government servants who are not covered by the provisions contained under the Rule, have been expressly excluded under the proviso to Sub-rule(1) and sub rule(6) of Rule 48-A of CCS(Pension)

Rules 1972. Had the intention of the legislature been to apply Rule 48-A prospectively the language used must have been entirely different and the rule could not have been worded in the present form. The object and purpose of providing a provision in Pension rules, for benefit of pension after completing 20 years qualifying service was to help those who devoted major portion of their life in service of the government. It could not be restricted to retirements after a particular date.

Hon'ble Supreme Court in case of 'D.S.Nakara & Ors Vs. Union of India(Supra) in the similar circumstances held as under:-

"That is the end of the journey. With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme 'of being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exhibits P-1 and P-2, violates Article 14 and is unconstitutional and is struck down. Both the memoranda shall be enforced and implemented as read down as under....."



The view ~~specified~~^{expressed} by Hon'ble Supreme Court is squarely applicable in the fact of the present case. The beneficial scheme of pension introduced by Rule 48-A could not be restricted to a class of employees who retired on completing qualifying service of 20 years after 28.11.1978 and refusing to those who retired earlier in the similar circumstances. In our opinion, the view taken by the respondents that applicant was not entitled for pension is arbitrary and violative of Article 14 of the Constitution of India. The order dated 10.1.1996 cannot be sustained.

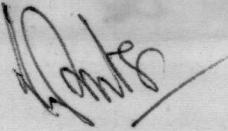
The impugned order is also liable to be quashed on the ground that it was passed without giving any show cause notice and opportunity of hearing to the applicant. The legal position in this regard is well established that any order entailing serious ^{civil} consequences can be passed against the person concerned, only after giving him opportunity of hearing. In the present case, it cannot be doubted that the impugned order entailed serious civil consequences against the applicant, as he was deprived of the pensionary benefits. Thus the order has been passed in clear violation of the principles of natural justice and is liable to be quashed.

The another angle argued by the learned counsel for the applicant that the order should be deemed to have been passed in relaxation as provided in Rule 88 is not necessary to be examined as the applicant is found entitled for relief on earlier two questions. The last question remains to be examined about the interest. The applicant's request for voluntary retirement was accepted by order dated 12/19.11.1993 and in normal course he would have been entitled for pension from the date when the provision came into force namely

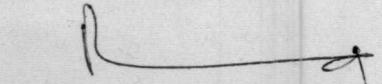
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28.11.1978. The benefit was however denied to the applicant by the impugned order dated 10.1.1996, the order we have found to be arbitrary and has been passed in violation of principles of natural justice. In our opinion, the applicant shall be entitled for the interest from the date 12/19.11.1993 to the date the entire amount of pension with arrears is paid to the applicant.

For the reasons stated above, this OA is allowed. The impugned order dated 10.1.1996 is quashed. The respondents are directed to pay arrears of pension to the applicant within a period of four months from the date a copy of this order is filed. The applicant shall also be paid simple interest on the amount w.e.f 19.11.1993 to the date of payment, @ 10% per annum. There will be no order as to costs.



MEMBER (A)



VICE CHAIRMAN

Dated: 30th Jan: 2003

Uv/