

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Orders reserved on : 22.2.2016

Orders pronounced on : 27.03.2016

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

O. A. No.414 of 2005

*Dr. Ram Sagar Ram Son of Shri Ram Narain Ram,
At present Member, Public Service Commission,
U.P. Allahabad.*

..... Applicant

(By Advocate : Shri I.M. Kushwaha)

Versus

1. *Union of India, through Secretary,
Ministry of Science and Technology,
New Delhi.*
2. *Director, National Physical Laboratory,
50 K.S. Krishnana Marg, New Delhi.*
3. *Secretary,
Council of Scientific and Industrial Research, Rafi Marg,
Parliament Road,
New Delhi-10001.*

..... Respondents

(By Advocate : Shri Vinod Swaroop)

ORDER

By filing this OA under section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:-

- “(i) The Hon'ble Tribunal may kindly be pleased to issue an order or direction in the nature quashing the order dated 20.8.04, passed by the Respondent no.2.




- (ii) The Hon'ble Tribunal may kindly be pleased to issue an order or direction directing the Respondents to add five year service period for qualifying for pensionary benefits under Rules 30 of CCS Pension Rules, 1972.
- (iii) issue any other order or direction as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.
- (iv) costs of the application may also kindly be awarded."

2. The facts of the case, as narrated by the applicant in the present OA, are that the applicant had obtained Dr. of Philosophy in Physics Spectroscopy in the year 1974 and was appointed and joined as Pool Officer on 6.11.1975 in National Physical Laboratory (hereinafter referred to as 'NPL') and continued as such till 1.6.1977 and thereafter he joined as Scientist 'B' on 2.6.1977 in the Division Specialized Technic in pursuance of the advertisement No.11-A/76, as the applicant was having the requisite qualifications.

2.1 It is also mentioned that NPL published the above stated advertisement on 9.10.1976 inviting applications from Scientists 'B' and 'C' and the minimum qualification for the Scientist 'B' was M.Sc. in Physics with three years experience in Spectroscopy or Ph.D. Since the applicant was having the requisite qualification, he was appointed and joined as Scientist 'B'.

2.3 It is also mentioned that before joining the NPL, the applicant was holding the post of Pool Officer in the Department



of Physics in B.H.U. since 9.6.1975 and got transferred in NPL on the same post on 6.11.1975.


2.4 In July 2002, the applicant was working as Scientist 'F' UV Radiation Standard.

2.5 The applicant served the NPL as Scientist 'F' and the applicant's service in all was 27 years, 9 months and 26 days till 28.2.2005 excluding the period of service which the applicant has done as Pool Officer at the time of applicant's superannuation.

2.6 The applicant vide order dated 21.11.2002 was appointed as a Member of U.P. Public Service Commission at Allahabad by the Government of Uttar Pradesh.

2.7 In pursuance of the applicant's appointment as a Member of Public Service Commission, which was with the concurrence and consent of the NPL, the applicant was relieved from NPL on 25.11.2002 in order to enable him to join as a Member of U.P. Public Service Commission.

2.8 Applicant further stated that the provisions of U.P. Public Service Commission (Condition of Service) Regulation 1937 provides that unless the Chairman or a member who at the date of his appointment was in the service to the Central Government or in State Government who voluntarily retired or is deemed to have retired under Regulation 6 of these regulations from the said service for the purpose of taking up the assignment as such



Chairman or Member opt for determination of his pension in accordance with the Clause 6-A the period of his service with effect from the date of his taking up the special assignment till date on which he would shall superannuate in the said service of the Central Government or State Government shall account for pension and other retirement benefits under the rules applicable to the service to which he belongs.


2.9 It is further stated that the applicant had submitted a letter on 17.7.2002 to NPL, New Delhi, requesting therein to add five years service as qualifying service for superannuation pension benefit in C.C.S.

2.10. It is also stated that according to the Rule 30 of CCS (Pension) Rules (hereinafter referred to as 'Pension Rules') which provides for addition of qualifying service in special circumstances.

2.11 In spite of several requests made by the applicant, the respondents have not paid any heed and, therefore, he again on 24.1.2004 submitted a representation.

2.12 On 20.8.2004, the applicant has received a letter from the NPL, New Delhi, to the effect that the applicant's case is not covered under the said Rules.

2.13 It is further stated that no opportunity has been given to the applicant before passing the order dated 20.8.2004 and thus the order dated 20.8.2004 is an *ex parte* order.



2.14 The applicant further stated that the respondents have not considered the provisions of Rule 30 of the Pension Rules as well as Public Service Commission Rules and without considering the same, rejected the applicant's representation and, therefore, the said order dated 20.8.2004 passed by respondent no.2 is absolutely illegal and against the law. The applicant has, therefore, filed the present OA for the reliefs mentioned above.

3. Notices have been issued to the respondents, who in turn filed their counter affidavit on 14.7.2005 with the contention that a letter dated June 2nd, 2005 has been sent by Controller of Administration, NPL, Dr. K.S. Krishnan Road, New Delhi, to the counsel for the respondents stating therein that the applicant has not impleaded the proper and necessary party in the aforesaid Original Application, as under the Ministry of Science & Technology, there are two different departments such as DST & DSIR. CSIR comes under the administrative control of DSIR. Therefore, the proper and necessary party should have been Secretary, DSIR instead of Secretary, Ministry of Science & Technology, but the applicant has not impleaded the necessary party in the above noted Original Application. Hence, the Original Application is liable to be dismissed on this ground alone.

4. The applicant after getting the copy of the counter affidavit immediately moved an Application for impleadment of Secretary

of Council of Scientific and Industrial Research as respondent no.3, which was allowed on 9.4.2014.

5. While giving para-wise reply, the respondents submitted that Dr. Ram Sagar Ram (applicant) took voluntary retirement w.e.f. 25.11.2002 to become a Member of Public Service Commission, U.P. and the NPL took the necessary action and informed Dr. Ram Sagar Ram vide letter dated 20.8.2004 that having taken voluntary retirement under Rule 48-B of Pension Rules, he is ineligible to get the benefit of addition of 5 years. Further it is mentioned that the benefits under Rule 30 of the Pension Rules are granted under certain conditions and in special circumstances, which provides that 'A Government servant, who retires from a service on post after the 31st March, 1960, shall be eligible to add his service qualifying for superannuation pension, but not for any other class of pension' is one of the conditions. The applicant was granted voluntary retirement as requested by him and accordingly, he was given the benefits under Rule 48-B of the Pension Rules. For benefits under Rule 30 of the Pension Rules, a Government servant has to give undertaking that he will not seek voluntary retirement before the date of superannuation. In this case, the applicant - Dr. Ram Sagar Ram had sought voluntary retirement w.e.f. 25.11.2002.

5.1 The respondents have also filed supplementary counter affidavit on behalf of the NPL and submitted that the NPL is a

Laboratory of the CSIR, which is a Central Autonomous Body under Ministry of Science and Technology, Govt. of India.

5.2 Rule 30 of the Pension Rules is applicable only to those employees who continue in their service until they reach to the age of superannuation. As per the applicant's date of birth, i.e., 03.02.1945, he would have retired on 28.2.2005 on reaching the age of superannuation (60 years). Since the applicant had taken voluntary retirement from the service of the NPL on 25.11.2002 for joining the U.P. Public Service Commission, his case will not be covered under Rule 30 of the Pension Rules.

5.3 In cases where an employee takes voluntary retirement before reaching the age of superannuation, his case is governed by Rule 48-A(1) of the Pension Rules.

5.4 The applicant was given the benefit of addition to his qualifying service applicable in voluntary retirement for the purpose of pension and weightage of two years, three months and three days under Rule 48 B of the Pension Rules has been granted to the applicant.

5.5 The brief particulars of the applicant are also stated by the respondents in their counter affidavit which are as under:-

- | | | | |
|-------|--------------------------------|---|----------------------------|
| (I) | Date of Birth | : | 03.02.1945 |
| (II) | Date of Appointment | : | 02.06.1977 |
| (III) | Date of Voluntary Retirement | : | 25.11.2002 |
| (IV) | Actual date of superannuation: | | 28.02.2005 |
| (V) | Qualifying service | : | 25 years 05 months 23 days |
| (VI) | Period of weightage | : | 02 03 03 |


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(VII) Net qualifying Service : 27 08 26

6. The applicant filed his rejoinder reiterated the allegations made in the Original Application and further stated that the allegations made by the respondents through counter affidavit are not admitted. The applicant further stressed upon the Rules 48-B and 30 of the Pension Rules which provide that five years qualifying service to be added in the pensionary benefits of the applicant.

7. We have heard Shri I.M. Kushwaha, learned counsel for the applicant and Shri Vinod Swaroop, learned counsel for the respondents and perused the material placed on record.

8. Learned counsel for the applicant submitted that provisions of U.P. Public Service Commission (Condition of Service) Regulations, 1937 provide that unless the Chairman or Member, who at the date of his appointment was in service to the Central Government or State Government, who voluntarily retired or is deemed to have retired under the provisions of Regulation 6 of these Regulations from the said service for the purpose of taking up the assignments and as such the Chairman or Member, who opts for determination of his pension in accordance with Clause-6A, the period of his service with effect from the date of his taking up the special assignment till the date on which he would superannuate in the said service of the Central Government or the State Government, shall be counted for the purpose of pension and other retiral benefits.



He further submitted that before passing the impugned order dated 20.8.2004, no opportunity was afforded to the applicant and further the respondents have failed to consider the provisions of Rule 30 of the Pension Rules as well as U.P. Public Service Commission (Condition of Service) Regulations and rejected the claim of the applicant arbitrarily. As such, the impugned order is liable to be quashed.

9. Counsel for the respondents has reiterated the stand taken by the respondents in their counter reply as well as supplementary counter affidavit.

10. Before going into the merits of the case, it is necessary to incorporate the necessary relevant provisions of CCS (Pension) Rules, 1972, which are relied upon by both the parties. The same are reproduced below:-

"30. Addition to qualifying service in special circumstances

(1) A Government servant appointed to a service or post after the 31st March, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one-

- (a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and
- (b) to which candidates of more than twenty-five years of age are normally recruited:

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Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

(2) A Government servant who is recruited at the age of thirty-five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in sub-rule (2) once exercised, shall be final."

"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.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) *Deleted.*

(3-A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;


(b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and death-cum-retirement gratuity of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(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.

EXPLANATION.- For the purpose of this rule the expression *appointing authority* shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement."

"48-B. Addition to qualifying service on voluntary retirement.

(1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48 (1) or Rule 48-A or clause (k) of Rule 56 of the Fundamental Rules or clause (i) of Article 459 of the Civil Service Regulations, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(2) The weightage of five years under sub-rule (1) shall be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48 (1) (b) or F.R. 56 (j)."

11. It is also important here to quote the impugned order by which the representation of the applicant was rejected. The same is reproduced as under:-

"NATIONAL PHYSICAL LABORATORY
(Council of Scientific & Industrial Research)
Dr. K.S. Krishnan Road, New Delhi - 110012 (INDIA)

Ref. No.6/2487/2004-E.II

Date: 20.8.2004.



Dr. Ram Sagar Ram,
Member,
Public Service Commission, U.P.
Allahabad.

Subject: Request for addition of 5 years service period
for qualifying for pensionary benefits under
Rule 30 of CCS (Pension Rules, 1972.

Sir,


With reference to your letter dated 15.4.2004 on the above subject, I am directed to state that having sought voluntary retirement under Rule 48-B of CCS (Pension) Rules, you have rendered yourself ineligible to get the benefit of addition of 5 years of qualifying service of pensionary benefits under Rule 30 of CCS (Pension) Rules, 1972. Hence your request can not be acceded to being not covered under Rules.

Yours faithfully,

(Subhash Chander)
Section Officer"

The above impugned order clearly provides that since voluntary retirement was sought under Rule 48-B of the Pension Rules, the request of the applicant for adding five years of qualifying service of pensionary benefits under Rule 30 of the Pension Rules cannot be acceded to, as his case is not being covered under the Rules.

12. Further after careful reading of the provisions of the relevant rules, it is not disputed that the applicant had sought voluntary retirement under Rule 48-B of the Pension Rules and his retirement is fully governed by Rule 48-A of the Pension Rules and so far as his contention of qualifying service of

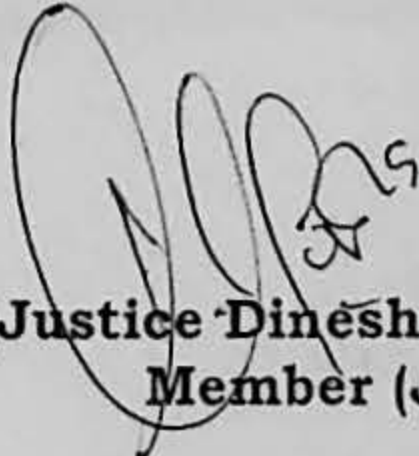


voluntary retirement is concerned, his case is fully covered by Rule 48-B of the Pension Rules.

13. So far as argument raised by the learned counsel for the applicant that the applicant's case is covered by the provisions of Rule 30 of the Pension Rules is concerned, we are unable to accept this argument. As from the perusal of the relevant rules in this regard, it is clear that the applicant's case is covered under Rule 48-B of the Pension Rules and the applicant has been rightly given the weightage of period of two years, three months and three days.

14. No other point raised before us by the learned counsel for the applicant.

15. In the result, for the foregoing reasons, we find that the present OA lacks merit and deserves to be dismissed. Accordingly the same is dismissed being devoid of merit. There shall be no order as to costs.


(Justice Dinēsh Gupta)
Member (J)

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