

9
CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 211 OF 2003
CUTTACK, THIS THE 09TH DAY OF August, 2005

Kshirod Kumar Behera..... APPLICANT

VS

Union of India & Others RESPONDENTS

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

yes

yes


(B.N.SOM)

VICE-CHAIRMAN

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 211 OF 2003

CUTTACK, THIS THE 09th DAY OF August, 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Shri Kshirod Kumar Behera, Aged about 51 years, S/o. Krishna Chandra Benera of village Koladia, P.O. Bhutmundai, Dist. Jagatsinghpur, at present working as Deputy Manage, SBI, Commercial Branch, Cuttack, O.S.I.C. Building, Khapuria, P.O. Madhupatna, Dist. Cuttack..

..... Applicant

Advocate(s) for the Applicant - M/s D.P.Dhalsamant, P.K.Behera

VERSUS

1. Union of India, represented by the Secretary, Ministry of Science and Technology, Technology Bhawan, New Meherulli Road, New Delhi.
2. Surveyor General of India, Dehradun, Hati Barkola Estate, Uttaranchal.
3. Director, Surveyor of India, South Eastern Circle, Plot No. 83-A, B.J.B. Nagar, Bhubaneswar.
4. Director, Survey of India, Research Development Directorate, Uppal Hyderabad-39(A.P.).
5. Officer-in-charge No. 76(P) Party (S.E.C.), Digital Survey Complex, P.O. Khandagiri, Bhubaneswar-30, Dist. Khurda.
6. Accounts Officer, Regional Pay & Accounts Officer, Survey of India, 15 Wood Street, Kolkata-16, West Bengal.

..... Respondents

Advocate(s) for the Respondents - M/s B.Dash(ASC), R.N.Mishra(ASC)

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN:

Shri Kshirod Kumar Behera, an ex-employee of the Respondent Department has filed this O.A. being aggrieved by the order No. 724/3-A-222, dated 27.5.02 passed by Respondent No.5 denying him the 'prorata' retirement benefits on the ground that he has rendered less than ten years of regular service.

2. The facts of the case are not disputed. The short point involved in this O.A. whether the applicant who had joined the Respondent Department in the scale of Rs. 320-400/- as 'Topo Trainee Type'A" with effect from 8.10.75 and who was allowed by Respondent No.3 by his letter dated 28.5.84 (Annexure-3) to obtain appointment in any other department subject to the conditions as laid down in Ministry of Home Affairs, O.M.No. 14/1/69 Estt.(D), dated 29.7.70 is entitled to count the lien period as regular service. The applicant had applied for a post of Probationary Officer (P.O., in short) in State Bank of India (SBI, in short) and was appointed to that post with effect from 20.9.85. After his appointment, the Respondent Department granted him lien against the permanent post that he was holding in that Department on the condition that he would have to pay the contribution towards pension, leave salary, G.P. Fund and Central Government Employee's Insurance Scheme regularly as required under the Rules. It was also stated there (Annexure-A/4) that if he defaults on the payment ever, the lien will be summarily

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withdrawn without entering into any correspondence whatsoever. The applicant was confirmed in the SBI vide their letter dated 31.10.87 (Annexure-A/7) with effect from 1.10.87. Pursuant to that, by his letter dated 22.4.88 (Annexure-A/8), the Respondent No.3 issued an order terminating lien of the applicant with effect from 1.10.87 on the ground that the applicant has been confirmed in the employment under SBI. Soon thereafter, the applicant approached the Respondents for payment of pensionary benefits. In 1995, the Respondents informed the applicant that his case was under active consideration. However, the matter remained under correspondence which culminated in the issue of their letter dated 27.5.02 (Annexure-34), which is the cause of action in this O.A.

3. The Respondents have opposed the application on the ground that the applicant did not serve under the Respondent Department for 10 years which is the minimum requirement for grant of pension. They have further stated that the lien period being not regular service for the determination of pensionary benefits, the applicant is not entitled to claim 'prorata' retirement benefit as he has rendered less than 10 years of regular service. No other fact of the case has been disputed by the Respondents in their counter. Their sole argument is that the pensionary benefit could not be granted to the applicant as the Sr. Accounts Officer who is the competent authority as per the CCS Pension Rules, 1972 (Rules in short) did not agree to the proposal to sanction prorata pension to the applicant.

4. I have heard the Ld. Counsel for both the parties and have perused the records placed before me.

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5. At the outset I must express my surprise at the feeling of helplessness that the Respondents have expressed at Para-4.2 of the counter which reads as follows :

“ That in reply to averments advanced in Para 4(i), it is most respectfully submitted that the allegation made by the applicant that Respondent No.5 refused to grant pensionary benefits is not correct. It is pertinent to mention here that the aforesaid order dated 27.5.02 was issued basing on letter No. RPAO/SRV/Pen/2002-03/09 dated 8.4.02 of the Sr. Accounts Officer, who is the competent authority as per the CCS(Pension) Rules,1972. Letter dated 8.4.02 of the Pr. Accounts Officer and Para-15 to 17 of Appendix 18 of CCS(Pension) Rules, corrected upto 1.10.87 are filed herewith as Annexure-R/1 and R/2 respectively.”

6. The Respondents have squarely passed on the buck to the Sr. Accounts Officer who they have described as the competent authority as per the Rules to determine eligibility of an employee for pension. I am not impressed by this argument on the part of the Respondents. Needless to observe that it is the appointing authority/Head of Department who is the authority competent to determine the service conditions/service benefits and not the Accounts Officer whose role and function are defined under Rule 3 of the Rules as follows :

1 (a) “Accounts Officer” means an officer, whatsoever his official designation may be, who maintains the accounts of a Ministry, Department or Office of the Central Government or Union Territory and includes an

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Accountant-General who is entrusted with the functions of maintaining the accounts or part of accounts of the Central Government or Union Territory;

7. The Rules have also provided definition of the Head of Department and other administrative authorities as follows for the purpose of pension :

(k) 'Head of Department' means an authority specified in Schedule I to the Delegation of Financial Power Rules, 1978, and includes such other authority or person whom the President may, by order, specify as Head of Department ;

(l) 'Head of Office' means a Gazetted Officer declared as such under Rule 14 of the Delegation of Financial Powers Rules, 1978, and includes such other authority or person whom the competent authority may, by order, specify as Head of Office;

8. From the above definition of the functionaries, it is clear that Sr. Accounts Officer is the accounts officer in the office of Respondent No.3 whose function is to maintain the accounts of that office of the Respondents. He is not the authority to determine the eligibility of an employee for pension but to assess the amount of pension payable to an employee on the basis of service particulars as given by Head of Office as per Form 7. His role is defined under Rule 65(1), he is the checking and not the sanctioning authority in respect of pension and he has no role to play with regard to determination of service conditions. The conditions governing grant of pension of various types has been laid down under Rule 35 to 41.

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lien under the Government, the date from which his unqualified resignation is accepted by the Government.

9. In this case, as it reveals, from the undisputed facts of the case, that on his joining the service of SBI as P.O., he was granted lien as per Annexure-4 dated 13.9.85, that his lien will be maintained with effect from 30.9.85 under the Government provided he pays the contribution towards pension, leave salary, G.P. fund and Central Government Employee's Insurance Scheme regularly as required under the Rules. He was also cautioned that if he defaults on the payment ever, the lien will be summarily withdrawn without entering into any correspondence with him. The applicant was confirmed in the service of SBI with effect from 1.10.87 (Annexure-7) and on receipt of this communication, Respondent No.3 by his order dated 22.4.88 deleted the name of the applicant from their establishment strength from 1.10.87 and the copy of this letter was also endorsed to the applicant. In the said Rule 37, provision has also been made under Rule 37(3) that "an employee on his absorption in a body controlled or financed by the Central Government, he shall be entitled to exercise option either to count the service rendered in the Central Government in that body for pension or to receive prorata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government." The Ld. Counsel for the applicant drawing our notice to the Dept. of Personnel, Pension and Welfare O.M. No. 4/8/84 dated 14.5.86 has submitted that the nationalized Banks including the SBI and its subsidiary Banks are to be treated as autonomous bodies for the purpose of prorata retirement benefit to the permanent Central

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Government employees who are absorbed in these bodies on the terms and conditions envisaged in this order as amended from time to time.

10. From the facts of the case as stated above, there is no doubt that the applicant had obtained 'No Objection Certificate' from his employers to apply for the post of P.O. in SBI, that he was granted to retain his lien and that lien was terminated only after he was declared to be confirmed in the Bank. It is not the case of the Respondents that the applicant had failed to fulfill the conditions for retention of his lien under the Government as set out in Annexure-4. Further our attention has been drawn to the Government instruction contained in O.M. dated 24.9.79 that the Government service will be counted till an official is absorbed in the autonomous body. As the applicant was absorbed in the Bank with effect from 1.10.87 after which only the Respondents had terminated his lien, his service for the purpose of pension has to be counted from 8.10.75 to 30.9.85. In the light of the rule position referred to above, we do not see how the proposal for payment of prorata pension to the applicant could have been negated by the Accounts Officer whose role and function are fixed under Rule 3(1)(a) of the Rules and also under Rule 65(1). The rule regarding counting of service during the period of lien having been clearly laid down under the Rule 37, we fail to see how there could be an occasion to harbour any doubt in this regard. However, in case any clarification was required, the authority to interpret the rules is not the Accounts Officer but the Ministry of Personnel and Training vide Rule 87. The instant case is a classic example of bureaucratic bungling sheer inertia to refer to the rule book before pronouncing

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the decision, even if the Accounts Officer had felt the need for verification of some facts. I must also express my dismay that the Head of the Department/Head of the Office failed to instruct the Accounts Officer in terms of Rule 37 and had he done so the Accounts Officer would have been bound by the direction of the Head of the office. The observation of the Accounts Officer to the effect " that lien period can not be considered as regular service for the determination of pensionary benefits" was a gross error being in total disregard of the rule provision under Rule 37(1)(ii) and hence totally without jurisdiction. In this view of the mater and for the sake of justice and equity, I not only quash the letter No. RPAO/SRV/Pen/2002-03/09 dated 8.4.02 (Annexure-R/1),but also direct that a copy of our order be sent to the Secretary, Ministry of Science and Technology (Respondent No.1) to inquire into the circumstances, in which such an opinion could be expressed by Principal Accounts Officer in contravention of the Rule 37.

11. On being mentioned by the Ld. Counsel for the applicant, I observe that the applicant's total qualifying service comes to 9years 11months and 22days and he is entitled to rounding of benefit as per Rule 49(iii). However, I do not pass any order, as this rule position has not been disputed by the Respondents either in their counter reply or during the oral argument.

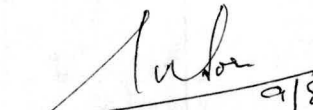
12. From the above discussion I have no doubt that the applicant is entitled to 'prorata' pensionary benefits in terms of the Govt. of India, Ministry of Home Affairs, O.M. dated 2.7.79 and Dept. of Personnel, Pension and Welfare O.M. No. 4/8/84-P & P.W.

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Dated 14.5.86. I, therefore, direct the Respondents to disburse the pensionary benefits to the applicant from the date it is due and admissible. Needless to add, delay in payment of pension being attributable to the Respondents, he is entitled to interest, which may be paid at the rate of 8% per annum. I also order that the Respondents will realize the amount of interest from those officials who are responsible for this delay as per the Govt. of India orders in this regard.

With the above direction, this O.A. is disposed of. No costs.


(B.N.SOM)

VICE-CHAIRMAN

KUMAR