

(a)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.NO. 424/88

DATE OF DECISION: 8.2.1995

Mr. S.G.Menghani ..Applicant

Mr. V G Rege ...Counsel for applicant

V/s

Union of India & Ors. ..Respondents

Mr.S.Karkera  
for Mr. P.M. Pradhan ..Counsel for respondents

Coram:

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P. Srivastava, Member(A)

1. To be referred to the Reporter or not? —
2. Whether it needs to be circulated to other Benches of the Tribunal? ~



Vice Chairman

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GUIESTAN' BUILDING NO.6  
PRESCOT ROAD, BOMBAY 1

O.A.NO. 424/88

S.G. Menghani  
B-8 Hermes complex  
Dhole Patil Road  
Pune 411001

..Applicant

v/s

Union of India  
(Min. of Surface Transport,  
Roads Wing), Transport Bhavan  
Parliament Street  
New Delhi 110001

..Respondent

Coram: Hon. Shri Justice M.S. Deshpande, V.C.  
Hon. Shri P.P. Srivastava, Member(A)

Appearance:

Mr. V.G. Rege  
Counsel for the applicant

Mr. S. Karkera for Mr. P.M. Pradhan  
Counsel for the respondent

ORAL JUDGMENT: DATED: 8.2.95  
(Per: M.S. Deshpande, Vice Chairman)

The applicant was appointed on August 3, 1954 and after giving a notice of voluntary retirement of three months which was to expire on May 31, 1983 the applicant retired. His qualifying service was counted as 29 years 1 month and 8 days under Rule 48-A of CCS (Pension) Rules, 1972 by the letter dated 16.5.1983, which is annexed to petition. The applicant's contention is that Rule 48-B which came to be introduced in CCS(Pension) Rules by the notification dated 26.8.83 took effect from 10.9.83 and under it the applicant would be entitled to the benefits of 33 years qualifying service in place of 29 years 1 month and 8 days which was allowed to him by the respondents. The applicant made a representation to the respondents to which a reply was sent rejecting his claim on 25.11.1987.

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He made a fresh representation to the Minister on 16.11.1987. By the reply dated 29.1.1988 the applicant was informed that the question regarding revision of pension was considered in consultation with the Department of Pension and Pensionary Welfare, but as the provisions of Rule 48-B of the CCS(Pension) Rules, 1972 came into force from September 1983 and since the applicant had retired w.e.f. 31.5.1983 i.e., earlier than the date from which the provision of Rule 48-B came into effect, he will not be entitled to the benefits available under 48-B. Feeling aggrieved by the reply the applicant has approached this Tribunal.

2. The respondents contention was that the applicant would not be entitled to claim any benefit under the amendment rule 48-B which was prospective. With regard to Rule 48-B which relates to addition to qualifying service on voluntary retirement provides:

(1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48(1)(a) 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."

Clause (ii) has no relevance to the facts of the present case because it relates to the Government servants who were prematurely retired by the Government under public interest under Rule 48(1)(b) or FR 56(j). The relevant sub-rule (iii) of Rule 48-A of CCS (Pension) Rules which were made applicable to the applicant provided that the total qualifying service as on the date of intended retirement of the Government servant retiring under this rule shall be regularised after allowing the weightage period was however that the total qualifying service rendered by the Government servant does not in any case exceed 30 years. Provided that the qualifying service after giving the weightage shall not exceed the qualifying service which the Government servant would have had, if he had retired voluntarily at the lowest age/minimum service limit applicable to him for voluntarily retirement prescribed under FR 56(K) or Article 459(1) of the Civil Service Regulations or Rule 48 of the CCS(Pension) Rules.

3. There is no dispute about the position that if Rule 48-A(iii) were to apply to the applicant's case the applicant would have been entitled only to a weightage of pensionary benefits of 4 months and 8 days to enable him to have 30 years of service under Rule 48-A of CCS (Pension) Rules, 1972. The contention of Shri Rege, Id. counsel for the applicant, however,

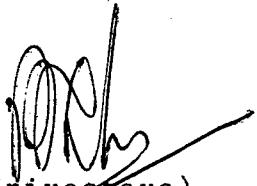
is that the amended rule would be retrospective in operation and would cover the case of the applicant as well. It is difficult to accept this submission because the provisions of S.6(c) of the General Clauses Act would apply, <sup>and they</sup> ~~as it~~ provides that where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment of the scheme. ~~On the date~~ The key words in rule 48-A(iii) as it stood earlier were <sup>that</sup> "the qualifying service as on the date of intended retirement of the Government servant" retiring under that rule, and that period could be increased or the weightage could be given as was contemplated by that provision. The provisions of Rule 48-B of the CCS(Pension) Rules as amended do not purport to be retrospective in operation and can be regarded only as prospective. It is clear, therefore, the applicant cannot claim any benefit under the amended rule 48-B which came into force from 10th September 1983 i.e., the applicant's retirement on May 31, 1983.

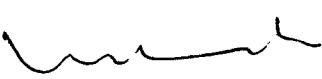
4. Another submission of Shri Rege was that a cut-off date <sup>not</sup> ~~could~~ be prescribed for the purpose by amending the rule. There cannot be any doubt unless it is shown that the cut-off date was either arbitrary or discriminatory and this is clear from the decision of the Supreme Court in the STATE OF WEST BENGAL Vs. RATTAN BEHARI

DEY & ORS., SCSIJ, 1993(1) 332.

5. The second point raised by Shri Rege was that if the applicant's services were to be extended by four months he would obviously be deemed to be entitled to the benefit of the amended rule 48-B because the date of retirement ~~would~~ shall be stretched to the end of September 1983 and the amendment came into force on 10.9.1983. This contention overlooks the position that what is permitted is granting of additional weightage to a retiring employee on the basis of the provisions made in the rules and it does not amount to extension in service. ~~While~~ this is so the contention that the applicant would be entitled to the benefit under the amendment provision would be without substance

6. In the result we see no merit in the application and dismiss it. No order as to costs.

  
(P.P.Srivastava)  
Member (A)

  
(M.S.Deshpande)  
Vice Chairman