

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 760/91

Transfer Application No:

DATE OF DECISION: 14.2.1995

Shri R.H.Dani

Petitioner

Applicant in person

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri M.R.Kolhatkar, Member (A)

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

(M.R.KOLHATKAR)

MEMBER (A)

(M.S.DESHPANDE)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA. NO. 760/91

Shri R.H.Dani ... Applicant

v/s.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Applicant in person

Shri P.M.Pradhan
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 14.2.1995 .

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the order dated 23.9.1991 and prays for a direction to give to him the benefit of added years of service under Rule 30 of CCS(Pension) Rules and DRDS Rule 12 (SRO 228/86) and for fixing the applicant's pensionary benefits on that basis.

2. The applicant was posted as Senior Scientific Officer, Grade II on 11.4.1963 for which the qualifications were: Essential - Research degree or first class Master's degree followed by good research work, Age Limits - Preferably below 40 years. The applicant retired on superannuation at the end of March, 1989 as Scientist 'D'. His contention was that he would be entitled to benefit of Rule 30 of CCS (Pension) Rules and for grant of additional years of service for the purpose of his pensionary benefits and since that was not granted, he approached the Tribunal by filing OA.No. 433/89 which came to be decided on 23.4.1991. While considering the contentions raised by the respondents, the Tribunal

considered Rule 12 (2) of DRDS Rules, SRO 228 of 6.1.1986 which is as follows :-

"Officers appointed to the posts of Scientist 'C' and above in the service shall be entitled to the benefits of added years of service for purpose of superannuation pension admissible under Rule 30 of the Central Civil Services (Pension) Rules, 1972 and this benefit shall also be admissible to officers who were appointed to comparable posts in the Defence Science Service and have been encadred in the Defence Research and Development Service."

The respondents' contention was regarding the mode of appointment but the Tribunal observed that there was no restriction on the scope of this rule depending on the method of appointment and since promotion was one of the methods of appointment on par with direct recruitment under the relevant rules, a promoted officer should also be entitled to the benefit of this rule subject to other conditions governing the grant of this benefit. Some such other conditions under Rule 30 of CCS (Pension) Rules, 1972 are 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, and for appointment to which either post graduate research or specialist qualification or experience in Scientific, Technological or Professional fields is essential and candidates of more than twenty five years of age are normally recruited. Having taken this view, the Tribunal directed the respondents to dispose of the case according to rules, after taking into account the submissions made by the applicant in the application and the observations in the order.



3. The respondents passed an order on 23.9.1991, which is being impugned here, to the effect that the applicant's appointment to the post of SSO-1 was neither a direct recruitment appointment nor was it his initial appointment under the Government; since prior to joining DRDO as SSO II he had served as Tech. Assistant in Overseas Communication Service and his case was different from that of Dr.E.S.Jog who was initially appointed to the post of SSO II as direct recruit under Government and in accordance with the provisions of DRDS Rules, 1979 officers appointed to the post of SSO II in Defence Science Service, who were encadred into DRDS, are not entitled to the grant of benefit of added years of qualifying service provided under Rule 30 of the CCS(Pension) Rules, 1972, hence his request for grant of benefit of added years of qualifying service under Rule 30 could not be acceded to. Being aggrieved by this stand the applicant has again approached this Tribunal for the aforesaid relief.

4. The main ground taken in the above order dt. 23.9.1991 was that the applicant was not a direct recruit to the post of SSO-1 corresponding to Scientist 'C'. It is true that this Tribunal had earlier observed that there was no restriction on the scope of the Rule depending on the method of appointment. All the same, the Tribunal did not issue any directions in terms of this interpretation and left the matter to the department. The Respondents would therefore urge that it is not now open to the Tribunal to review its earlier order. The applicant has pointed out in his rejoinder dt. 2.6.1994 that by the letter dt. 26.9.1988 issued by Government of India, Ministry of Defence, Department of Defence

Research and Development on the question of extension of benefit under Rule 30 of C.C.S. (Pension) Rules it is conveyed as below:

"the sanction of the President to the extension of the benefit of added years of service under Rule 30 of CCS(Pension) Rules, 1972 to those individuals who had been appointed to the posts of Junior Scientific Officer and above in the erstwhile DSS and who have retired from Government service or post on superannuation after 31.3.1960 subject to the fulfilment of other requirements as given in Rule 30 of CCS(Pension) Rules, 1972."

in terms of letter dt.26.9.88
It is, therefore, clear that the applicant's case was governed by Rule 30(1) of the CCS (Pension) Rules and he would have been entitled to the benefit of the additional service.

5. The Respondents had passed an order on 23.9.1991 in terms of earlier directions of the Tribunal. Subsequently, the applicant appears to have been been in correspondence with the Respondents and the respondents by their letter dt. 30.3.1993 addressed to the applicant by the Assistant Director (Personnel) for Director General Research and Development referred to the aforesaid letter and mentioned that :-

"The posts of JSO and above in the erstwhile Defence Science Service do not automatically qualify for benefit of added years of service as the same is subject to fulfilment of other requirement as given in Rule 30 of CCS(Pension) Rules. One of the requirements of CCS(Pension) Rule is as under:-

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

6. Thus the Respondents have now shifted

their stand that the main hurdle was that the applicant was not directly recruited to SSO-I and have instead taken recourse to the proviso referred to above. Admittedly, such a proviso did not form part of Rule 12 (2) of the DRDO rules (SRO 228) from which the extract was quoted above. Here the applicant would invite our attention to Government of India, Ministry of Finance, O.M. dt. 15.4.1975 and O.M. dt. 21.11.1977 reproduced as Government of India's decision No.1 under Rule 30 of the CCS Rules in the Swamy's Pension Compilation, 11th Edition, 1974

"(1) Benefit of added years of service to specially qualified or experienced personnel. - The Third Pay Commission in paragraph 68 of Chapter 60 of their report, while recommending for the continuance of the benefit of added years of service under Rule 30 of the C.C.S. (Pension) Rules, have made further recommendation as follows:-

"We think that the existing provision for giving the benefit of added years of service to specially qualified or experienced personnel appointed to posts where these qualifications are necessary in the public interest is salutary and should continue. We would also recommend that the scientific, medical, technological and other professional services and posts where the benefit of added years of service is considered essential should be identified in consultation with the Union Public Service Commission and the Ministry of Finance, and a suitable provision incorporated in the relevant recruitment rules so that the benefit is automatically available to all the candidates who are recruited in accordance with the provisions of the rules and it should not then be necessary to take a decision in each individual case at the time of recruitment. Further, in the advertisements issued by the Union Public Service Commission for recruitment to such services and posts it should be mentioned that this benefit would also be available so that candidates of better quality are attracted to the Government service.

(2) The Government have since accepted the

above recommendation. The Ministries/ Departments are, therefore, requested to follows hereafter the following procedure for making recruitment to services or posts, the incumbents of which may have to be allowed, the benefit of added years of service under Rule 30 of the C.C.S. (Pension) Rules:-

- (i) The Ministry/Department concerned should identify the service or post to which a candidate possessing qualifications, experience and age as referred to in clauses (a) and (b) of Rule 30 of the C.C.S.(Pension) Rules may have to be appointed.
- (ii) after the service or post referred to in (i) above has been provisionally identified, the Administrative Ministry/Department will in the first instance refer the proposal for the grant of benefit of Rule 30 of C.C.S.(Pension) Rules in respect of the service or the post to the Ministry of Finance, Department of Expenditure and after their views have been obtained, refer the proposal to the Union Public Service Commission for obtaining their confirmation. Only thereafter action may be taken to make a provision in the relevant recruitment rules in consultation with the Department of Personnel and Administrative Reforms and the Union Public Service Commission.

Once a provision in the recruitment rules has been made after following the procedure mentioned above, the benefit of Rule 30 ibid. will automatically be admissible and the need to decide individual cases will not arise. However, in the advertisement issued by the recruiting authority for recruitment to such a service or post it would be specifically mentioned that the service or post is one which carries the benefit of Rule 30 ibid.

(3) It is requested that while framing recruitment rules in future, the question of applicability or non-applicability of the provisions of Rule 30 of the C.C.S. (Pension) Rules to the service or Post(s) for which recruitment rules are required to be issued, should also be decided in accordance with the procedure indicated in the O.M."

From the above it is clear that the addition of the proviso was envisaged in the context of Officers recruited after the finalisation by the Government

of India ~~take~~ decisions on the recommendations of the IIIrd Pay Commission. The question of having such a proviso in the case of Officers recruited prior to 1.1.1973 obviously would not arise, because ~~as~~ these cases are to be dealt with as individual cases. It was precisely to avoid taking decisions in individual cases that the Government decided to introduce the proviso as above in all Recruitment Rules framed after 1.1.1973. Therefore, the absence of the proviso in the relevant rules cannot be made a ground for denial of the benefit to the applicant reoriented prior to 1.1.1973.

7. The learned counsel for the respondents urged that the applicant did not meet with the requirements of Rule 30(1)(a) of the C.C.S.(Pension) Rules which provides that:-

"A Government servant who retires from 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 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."

We have already pointed out above that for the post of SSO Grade II what is essential is Research degree or first class Master's degree followed by good research work. There is no dispute about the fact that the applicant had more than three years experience in scientific, technological and professional fields prior to his recruitment and that he was a holder of a Master's degree. We,

therefore, see no impediment in the way of the applicant answering the requirement of clause (a) of sub-rule (1) of Rule 30 and this position also was not seriously disputed on behalf of the respondents.

8. The counsel for the Respondents would urge ~~that~~ even assuming that the benefit of additional five years of service in terms of Rule 30 is to be made applicable to the applicant, it should be done on the basis that the applicant has already availed of the benefit of counting three years of service in the Overseas Communication service from 15.1.1960 to 10.4.1963 in the grade of Technical Assistant prior to his joining Defence Science Service on 11.4.1963. This argument which is advanced without any reference to specific provision of rules or any averment does not appeal to us. On a perusal of the rules, it is clear to us that the period of ~~three~~ years of service in the Overseas Communication Service, Bombay has been counted as a qualifying service not in terms of Rule 30, but under Rule 14 conditions of of the C.C.S.(Pension) Rules which ~~defines the~~ / detract from qualifying service and which cannot ~~be read to~~ additional benefits which the applicant is claiming under Rule 30 of the C.C.S.(Pension) Rules. It is clear that the applicant was entitled to the benefit of 5 years of added service under Rule 30(1) of the CCS(Pension) Rules and it should have been added to the applicant's service for qualifying for superannuation pension.

9. We, therefore, allow the application and direct the respondents to add 5 years of service under Rule 30(1) of the CCS(Pension) Rules to

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the applicant's qualifying service for the pensionary benefit and grant to him all the benefits which will flow from such a position within four months from the date of communication of this order.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

(M.S.DESHPANDE)
VICE-CHAIRMAN

B.