

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 872/92

~~Transfer Application No~~

DATE OF DECISION: 8.9.94

V.R.Nikam Petitioner

Shri S.P.Kulkarni Advocate for the Petitioners

Versus

Union of India and others Respondent

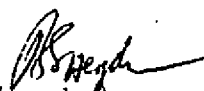
Shri A.I. Bhatkar Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

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

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


(B.S. Hegde)
Member (J)

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No.872/92.

V.R.Nikam.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri R.Rangarajan, Member(A).

Appearances:-

Applicant by Shri S.P.Kulkarni.
Respondents by Shri A.I.Bhatkar.

JUDGMENT :-

[Per Shri B.S.Hegde, Member(J)] Dated: 8.9.1994.

In this Original Application, the applicant is aggrieved by the denial of added years of qualifying service under Rule 30 of the CCS(Pension) Rules, 1972.

2. The applicant initially was appointed as a Labour Investigator under the Government of Bombay (Maharashtra) in the year 1955. On or about 16.4.1958 he joined as a Labour Officer on being selected through the U.P.S.C. on the basis of his application forwarded through the Government of Maharashtra. The said post belongs to the Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951. At the time of joining as Labour Officer, the applicant was aged 32 years. He retired from the service on reaching the age of superannuation w.e.f. 30.4.1984. At the time of his retirement, the applicant was working as a Senior Labour Officer attached to the Office of the Chief Engineer (WZ), CPWD, Bombay.

3. The applicant contends that the payment of

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pension and other retiral benefits were paid to him on the basis of pay drawn for a total qualifying service of 29 years, 26 years under the Central Government and 3 years rendered under the Government of Maharashtra as admissible in terms of Govt. of India, Ministry of Personnel and A.R. letter dated 31.12.1982.

4. The respondents in their reply denied the contention by stating that the applicant has got the service benefit in the State Government counted for the pensionary benefits for the period from 1955 to 1958. Therefore, he is not entitled to get the benefit of added years of service under Rule 30 of the CCS (Pension) Rules read with Rule 7(1) of the CCS (Pension) Rules, in accordance with Rule 8(2) of the Labour Officers (Central Pool) Recruitment and conditions of service Rules, 1951 over and above the service under the State Government should be counted for pensionary benefits.

5. The moot question for consideration is whether the applicant is justified in seeking the added years of service for the purpose of pensionary benefits as provided under Rule 30 of the CCS (Pension) Rules, 1972. In this connection, it is relevant to reproduce Rule 30 of the CCS (Pension) Rules, 1972, which reads as follows:

" (1) A Government servant appointed to a service or post after 31.3.1960 (and the benefit now admissible to those who retire from service after 31.3.1960, Rule amended with effect from 28.10.1987, vide O.M. No. 28/51/86-P & PW dt. 28.10.87) 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 forth of the length

of his service or the actual period by which his age at the time of recruitment exceed 25 years or a period of 5 years, whichever is less, if the service or post to which the Government servant is appointed is one -

(a) for which post graduate research for specialised qualification or experience in scientific, technological or professional fields is essential and

(b) to which candidates of more than 25 years of age are normally recruited.

(2) 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 10 years.

(3) 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.

(4) Provided also that this concession shall not be admissible to those who are eligible for counting their past services for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this sub-rule foregoing the counting of the past service (vide Notification No.28/40/88-p and PW(B) dated 9.1.1992)."

6. In the light of the above, the learned counsel for the applicant contends that under Rule 30 as it existed at that time, he having been appointed prior to the stipulated date of 31.3.1960 was not

entitled to the said benefit of added years of service. However, the department of Pension vide their letter dated 28.10.1987 relaxed the aforesaid restriction and extended the benefit of added years of service under Rule 30 of the CCS(Pension) Rules, would be applicable to all those who retired from service or post after 31st March 1960. The question is whether the said amendment would be applicable to those who had already retired from service, the Department of Pension clarified vide its order dated 15.3.88 which reads as under:

" As is the prevalent practice, the cases would be reopened on the request of the pensioners concerned. As regards the arrears, the same will be admissible from the date of publication of the said amendment in the Gazette."

Accordingly, the applicant applied for revision of the pension and retirement benefits with the added years of services as admissible under Rule 30 of the pension Rules. The Ministry of Labour vide their letter dated 3.12.1991 further, reiterated that the benefit of added years of service was admissible to all those who retired from service or post after 31.3.1960. In the said letter they have further stated that the benefit was not admissible in case of those officers who counted their earlier spells of service rendered either under the Central Government/ State Government/Central Autonomous Body or State Autonomous Body. The learned counsel for the applicant Shri Kulkarni, further contends that the amendment to Rule 30 proviso (3) has come into effect only on 1.2.1992 and it will have only prospective effect and not retrospective effect, since the applicant has retired as back as in 1984 and by virtue of the 1987

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amendment he is entitled to claim the added years of service as provided under Rule 30. The applicant relied upon the decision rendered by the Madras Bench of the Tribunal in (1989) 9 ATC CAT 260. (S.Dharmalingan Vs. Secretary Govt. of India.), held that if the appointment is after 31.3.1960 to a duly constituted service forming a cadre of large number of posts or to any isolated post, Rule 30(1) of the Pension Rules starts operating and the benefit is admissible under that Rule provided the appointment to such a service or such an isolated post which calls for post graduate research qualification or specialist qualification and ordinarily candidates more than 25 years of age only are appointed to such posts or service. The term " a service or post " referred to in Rule 30 (1) cannot refer to appointment to Government service in general. Accordingly, the Tribunal held that person directly recruited to such a post after 31.12.1960 though appointed to Government service earlier will be entitled to the benefit of the Rule.

7. Against this decision, the respondents had filed an SLP in the Supreme Court which was dismissed. The Supreme Court vide its order dated 28.10.1993 in the said decision Civil Appeal No. 503/93 (S.Dharmalingan) has observed that service prior to 1960 shall count under Rule 30 of CCS (Pension) Rules for qualifying service for pension. Further, the learned counsel for the applicant has also drawn our attention to the Labour Officers Central Pool Recruitment Rules and Conditions of Service Amendment Rule, 1980, in which the applicant belongs that the benefit of added years of service under Rule 30 of the CCS (Pension) Rules 1972 will be admissible to the Labour Officer of the Central Pool.

8. The respondents counsel, Shri Bhatkar opposed the contention of the applicant that he should be given the length of added years of service as provided under Rule 30 of the Pension Rules. He pointed out that in that letter dated 3.12.1991 (Exhibit A2) that the above benefit is not admissible in case of those officers who counted their earlier spells of service rendered either under the Central Government/State Government/Central Autonomous Body/State Autonomous Body. Since Shri Nikam V.R. has got counted the State Government Service from 6.4.1955 to 15.4.1958 for pensionary benefits alongwith his service under the Central Government, the benefit of added years of service in accordance with Rule 30 of the CCS(Pension) Rules, 1972 cannot be extended to him. This is based on the instruction of the Department of Pension.

9. The respondents mainly relied upon the new proviso included in Rule 30 of the Pension Rules which reads as follows:


" Provided also that this concession shall not be admissible to those who are eligible for counting their past services for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this sub-rule foregoing the counting of the past service (Vide Notification No.28/40/88-p and PW(B) dated 9.1.1992."


10. Accordingly, the respondents was of the opinion, that by virtue of the amendment, the applicant can be given an option either to get earlier period of service counted towards pensionary benefits or to get the benefit of added years of service in accordance with Rule 30 of the Pension Rule.

11. As stated earlier, the applicant's case stands entirely on a different footing and not covered under the new proviso of 1992 to Rule 30 but under the existing proviso, under which he will be entitled to claim the added years of service. Apart from the Court decisions, under the Rules, he is eligible to claim the added years of service under Rule 30 of the Pension Rules. It is true, that after 1992 any person who retired from service shall have to opt for counting of added years of service or previous years service either rendered in State Government or Central Government as the case may be, but this is not the situation in the instant case.

12. Hence keeping in view the ratio laid down by the decisions of the Tribunal and the Supreme Court and relevant provisions of the Rules, since the facts of those cases are similar to the present case, as the applicant fulfills the conditions prescribed in Rule 30 of the Pension Rules, 1972, the application is required to be allowed. Accordingly, the respondents are directed to give him the added years of service under Rule 30 of the Pension Rules over and above the inclusion of State service. The respondents are further directed, to re-compute the same and pay the revised pension within a period of four months from the date of receipt of this order.

13. In the circumstances, the application is allowed but there will be no order as to costs.


(R. RANGARAJAN)
Member (A)


(B.S. HEGDE)
Member (J)