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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 383/93

~~XXXXXX Application No.~~

DATE OF DECISION 28-7-1994

Dr. Ramchandra Jog Petitioner

Shri B.L. Nag Advocate for the Petitioners

Versus

Under Secy., M/D & 3 Others Respondents

Shri P.M. Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Smti LAKSHMI SWAMINATHAN, MEMBER (JUDICIAL)

The Hon'ble Shri

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

NO

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (JUDICIAL).

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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O.A.383/93.

Dr. Ramchandra Jog.

.. Applicant.

Vs.

1. Under Secy., to the Govt.
of India, Min. of Defence,
New Delhi.

& 3 Others.

.. Respondents.

Coram : Hon'ble Smt. Lakshmi Swaminathan, Member (Judl.)

Appearances:

1. Shri B.L. Nag, Counsel
for the applicant.
2. Shri P.M. Pradhan, Counsel
for the Respondents.

JUDGMENT :

Date : 28th Feb. 1994.

I Per : Hon'ble Smt. Lakshmi Swaminathan, Member (J) X

This application has been filed by the applicant on the ground that he has been denied the benefit of 5 years of added service qualifying for superannuation pension under the provisions of Rule 30 of the CCS(Pension) Rules, 1972. His claim for being entitled to the added qualifying years of service is based on the provisions of Rule 30 of the Pension Rules read with Rules 6, 7 and 12 of the Defence Research & Development Services Rules, 1979 (hereinafter referred to as ERDS Rules) and the fact that another Officer Dr. E.S. Jog, Scientist in the sister establishment i.e. E.R.D.E./ Pune (Respondent No.4) who retired on 1.9.1981 on superannuation had been granted the benefit of the added years of service under the aforesaid Rules.

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1. Hence, denying him the similar benefit was discriminatory and in violation of articles 14 and 16 of the Constitution of India.

2. The brief facts of the case are that the applicant who was appointed as Sr. Scientific Officer Gr.II (SSO_{GR.II}) in the Defence Science Services (DSS) in 1966 had been promoted to the post of Sr. Scientific Officer Gr.I under the same services, and further promoted as Scientist 'D' and Scientist 'E' under the D.R.D.S. Rule, 1979 subsequently. The applicant's claim is that by virtue of the provisions in Rules 6 and 7 of the D.R.D.S. Rules there can be several methods of recruitment and that on the date of publication of these Rules i.e. 30.12.1978, he was holding the post of Sr. Scientific Officer Gr.I which was equivalent to Scientist 'C' of the Defence Research & Development Services (DRDS). According to the applicant, therefore, these rules read with Rule 12 of the D.R.D.S. Rules entitles him to the benefit of added years of service for the purpose of superannuation pension admissible under Rule 30 of the CCS(Pension) Rules.

3. The respondents have in their reply stated that the applicant was not entitled to the grant of benefit of the added years of service as provided under Rule 30 of the Pension Rules for the reasons that, he was directly appointed as Sr. Scientific Officer Gr.II only on 10.5.66, which is equivalent to Scientist 'B', and only an officer appointed as Scientist 'C' and above or equivalent is entitled to the benefit of the provisions of these rules. In the case of Dr. E.S. Jog who retired from Government service on 31.8.1981 from ERDL, Pune the Respondents have stated that the added years of service had been granted

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erroneously to him and his case was under review. They have, therefore, pleaded that the case of Dr. E.S. Jog cannot be relied upon by the applicant and this case must be decided on the correct interpretation of the relevant rules. It is also the contention of the Respondents that keeping in view the recommendations of the 3rd Pay Commission that in order to attract more qualified or experienced personnel in scientific, medical, technological or professional services for appointment in Government posts, the provisions of Rule 30 of the Pension Rules had been amended in 1975. This was done so that the benefit of the added years of service is automatically available to all such persons who are recruited in accordance with the provisions of these rules. The second proviso to Rule 30 states 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." Rule 12(2) of the D.R.D.S. Rules, 1979 provides: "Officers appointed to the post of Scientist 'C' and above in the said service shall be entitled to the benefit of added years of service for the purpose of superannuation pension admissible under Rule 30 of CCS(Pension) Rules, 1972, and these benefits shall also be admissible to officers who were appointed to comparable posts in the Defence Science Service and have been encadred in LRDS."

4. The respondents, therefore, submit that the intention of Rule 30 of the Pension Rules read with Rule 12(2) of D.R.D.S. Rules is to attract persons with required qualifications and experience to be recruited directly from the open market into Government service and does not, therefore, apply to those persons who have been subsequently promoted to 'Scientist 'C' and above, while in Government service. Since the applicant was only

recruited directly in the Government Service as Sr.

Scientific Officer Gr.II on 10.5.1966 in ~~D.S.S.~~

~~D.S.S.~~ which is a post equivalent to Scientist 'B' in D.R.D.S., and below Scientist 'C', he was not entitled to the benefit of the added ~~years~~ of service provided under these rules.

5. There is no dispute that the applicant had been directly appointed in the year 1966 in the ~~D.S.S.~~

~~D.S.S.~~ (DSS) in a grade which is not equivalent to the post of Scientist 'C' in D.R.D.S. The question, arises whether he can claim the added years of service at the time the D.R.D.S. Rules were notified on 30.12.1978 when he was holding the post of Sr. Scientific Officer Gr.I, which was equivalent to Scientist 'C'. In other words, ~~can he~~ be regarded as having been 'appointed' to the post of Scientist 'C' or equivalent in the D.R.D.S. and DSS, respectively, so as to entitle him for the benefit of added years of service? The claim of the applicant under Rule 30 of the Pension Rules will be admissible to all officers who have been appointed to comparable posts in the Defence Science Service which are equivalent to Scientist 'C' in D.R.D.S. Since the applicant was only appointed as Sr. Scientific Officer Gr.II in D.S.S. which is not equivalent to Scientist 'C' post in D.R.D.S., the applicant's claim is not tenable. Although there may be several methods of recruitment as provided in Rule 6 of the D.R.D.S. Rules, which includes promotion and direct recruitment, for the purpose of allowing benefit of added years of service for the purpose of superannuation pension admissible under Rule 30, there has to be a specific provision to this effect in the recruitment rules as provided in the proviso to this Rule. Rule 12(2) of the DRDS Rules refers only to officers who are 'appointed' to the DRDS/DSS at the level of Scientist 'C' or equivalent

and not to those who are later promoted to that post.

Therefore the applicant's claim cannot be accepted.

6. The applicant also referred to the policy letter dated 26.9.1988 issued by the Government of India, Ministry of Defence on the subject of extension of the benefit under Rule 30 to those individuals who had been appointed to the post of Jr. Scientific Officer and above in the erstwhile DSS and who have retired from Government service on superannuation after 31.3.1960. According to the applicant since he was a Sr. Scientific Officer Gr.II at the time of recruitment, this letter also shows that he is entitled to the benefit of added years of service. This contention cannot also be accepted because the letter dated 26.9.1988 provides that the extension of the benefit is subject to the fulfilment of the other requirements as given in Rule 30 of the CCS (Pension) Rules. For reasons given above, as provided in Rule 30, the conditions prescribed in Rule 12(2) of the D.R.D.S. Rules have also got to be fulfilled before such benefit can be availed of.

7. The learned Counsel for the applicant also relied upon the decision of this Tribunal in R.H. Dani Vs. Union of India & Others (O.A.433/89) dated 23.4.1991, (Annexure A-10). This case also does not help the applicant since the Tribunal had not considered the rival contentions advanced by the parties in that case and had merely directed Respondent No.2, instead of Respondent No. 3, to take the decision in respect of applicant's claim. The other case relied upon by the applicant (S.Dharmalingam v. Secretary to the Government of India and another, (1989) 9 ATC 260 Madras) is distinguishable on the facts, as the

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Tribunal was dealing with Rule 30 of the Pension Rules with reference to the interpretation of the clause "a : service of Post" in the first line which is not relevant in the instant case.

8. In the facts and circumstances, therefore, since the applicant was not appointed to the post of Scientist 'C' or other comparable post in the erstwhile Defence Science Service in 1966, he is not entitled to claim the benefit of additional years of service qualifying for superannuation pension as provided in Rule 30 of the CCS(Pension) Rules. The application is dismissed, with no order as to the costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER (JUDICIAL).

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(12)

Review Petition No. 53/94

in

Original Application No. 383/93

Dr. Ramchandra Jog

.... Applicant

Vs.

Under Secy., Min. of Def., & Others. Respondents

ORDER ON REVIEW PETITION NO. 53/94

Tribunal's order :

Date : 22.4.1994

I PER : Hon'ble Smt. Lakshmi Swaminathan, Member (J) I

This Review Petition has been filed for review of the order dated 28.2.1994 in O.A. 383/93 rejecting the applicant's claim to the benefit of 5 years of added service qualifying for Superannuation pension under the provisions of Rule 30 of the CCS (Pension) Rules. The Review Petition has been filed on the grounds, interalia that the D.R.D.S. Rules, 1979 have not been perused in their entirety and on interpretation of the relevant rules which according to the petitioner, has lead to the wrong order.

I have carefully perused the petition and I find that no new grounds have been raised which could not have been raised at the time when the applicant was heard in support of the original application. The allegation of the applicant that the order is wrong cannot be a ground for review as there is no error apparent on the face of the same. The prayer to place the review petition before the

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Division Bench is contrary to the provisions of Section 5 (6) of the Administrative Tribunals Act, 1985 read with Rule 17 (2) of the Procedure Rules, 1987 and Rule 18(c) of the Rules of practice, 1993. The application for review is therefore, dismissed.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (Judl.)