

(23)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD.

O.A.NO. 1009 of 1994.

DATE OF JUDGMENT: 13.9.1995.

BETWEEN:

S.A.Razak

...
And

Applicant

1. Union of India, Rep. by its Secretary, Ministry of Defence, South Block, New Delhi.
2. The Scientific Adviser to the Minister of Defence & Director General Research & Development, Directorate of Personnel, Ministry of Defence, DHQ PO New Delhi.
3. The Director, Defence Electronics, Chandrayan nagutta, Hyderabad.

...
Respondents

COUNSEL FOR THE APPLICANT: SHRI K.Sushakar Reddy

COUNSEL FOR THE RESPONDENTS: SHRI K.Bhaskara Rao
Sr/Addl.CGSC.

CORAM:

HON'BLE SHRI X JUSTICE X X X X X
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

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JUDGMENT

Heard Sri K.Sudhakar Reddy, learned counsel for the applicant and Sri K.Bhaskara Rao, learned Standing Counsel for the respondents.

2. The applicant herein joined as Infantry Soldier at Maratha Light Infantry, Belgaum on 11.10.1956. After completion of four years and 176 days of service in Army, he was discharged from Army on extreme compassionate grounds on 5.4.1961. Thereafter he joined DLRL under the control of R-3 on 23.2.1962 and he resigned voluntarily from that organisation on 11.4.1972 after serving 10 years and 2 months in DLRL organisation.

3. With a view to get higher post, he registered his name in the Employment Exchange after getting permission ~~for registering his name in the Employment Exchange was granted by Certificate~~ bearing No.DLRL/PERS/SAR/134. He had also applied for the post of Watchman/Peon in State Bank of Hyderabad. That application was forwarded by R-3 to the General Manager, State Bank of Hyderabad by letter No.DLRL/EST/SAR/134 dt. 7.3.1972. The applicant requested the respondents for granting him pro-rata pensionary benefits for the period he served in DLRL. But, the respondents had turned down that request on the ground that as the applicant voluntarily retired from service he is not entitled for any pro-rata pensionary benefits. It is stated that the above decision of turning down the request for grant of pro-rata pensionary benefits was necessitated because of Sub-Rule(8) of Rule-26 of CCS(Pension) Rules.

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4. The applicant submits that he had registered his name in the Employment Exchange for higher post and also his application for the post of Watchman/Peon in State Bank of Hyderabad was forwarded by the respondents. Even if he had not stated ~~reasons while resigning from under R-3 organisation without specifying the reason for his resignation~~ he is entitled for pro-rata pensionary benefits as his application was forwarded to State Bank of Hyderabad by the respondent organisation through proper channel. He relies on Sub-rule(2) of Rule-26 of CCS(Pension) Rules for granting him the necessary pro-rata pensionary benefits for the period he had served in DLRL organisation. He submitted his representations for pro-rata pension by his application dt. 3.2.1994, but the same was rejected by order No.DLRL/EST-I/413005/Misc./ GD dt. 22.4.1994.

5. Aggrieved by the above, he has filed this OA praying for a declaration that the applicant is entitled for pensionary benefits in terms of Sub-rule (2) of Rule-26 of CCS(Pension) Rules with effect from 11.10.1956 to 11.4.1972 and for a further direction to the respondent authorities to pay the arrears of pension and continue to pay the pension.

6. The main contention of the respondents in rejecting his request for pro-rata pension is that the applicant had voluntarily resigned from service and he had not stated in his resignation letter that he is resigning to join the State Bank of Hyderabad. It is further contended that even under sub-rule(2) of Rule-26, the applicant is entitled for counting his service for pro-rata pension only if he had resigned giving the reasons for such resignation and

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obtained proper permission for such resignation. As he had resigned without indicating that he had resigned to take-up the job elsewhere in another Government Department/Government undertaking, he is not entitled for pro-rata pension.

7. The respondents in their reply affidavit have stated that the resignation tendered by the applicant is on personal grounds and he ~~xx~~ ~~xx~~ has nowhere stated that he is resigning for taking up a job in State Bank of Hyderabad. For this, they brought to my notice Item-IV dt.18.4.1972 of Daily Order Sheet/(Annexure R-2), wherein under the heading "Releasing of Staff/Particulars of Casualty" it is noted that "Sri S.A.Razak, Pmt.Orderly had been relieved of his duties in the laboratory with effect from 11.4.72(A/N) at his request after submitting resignation. The remaining required notice period of 24 days has been waived by the Director as a special case."

8. It is not disputed that the applicant was allowed to register his name with the Employment Exchange for higher post. It is also not in dispute that his application was forwarded to State Bank of Hyderabad for the post of Watchman/Peon through proper channel. Considering the above, it has to be presumed that he had voluntarily retired from service in DLRL organisation only to join State Bank of Hyderabad. ^{applicant being} ~~the~~ a low paid employee, it ~~is~~ beyond my ~~the~~ comprehension to come to conclusion that he had submitted his resignation to sit idle. Though, it is not noted in the Daily Order Part-II No.NIE-24 under Item-IV that he submitted his resignation to join S.B.H., in view of the circumstances mentioned ~~xx~~ above, it has to be taken

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that the above resignation was submitted only to join State Bank of Hyderabad. It may be possible that the office order, ^{being} ~~have~~ a gist of daily orders passed ~~and~~ it may not elaborately state the reasons for resignation. The detailed reasons for resignation has to be obtained only from the relevant records. Unfortunately, the relevant records in this connection is reported to have been destroyed ^{as per standing instructions} ~~five years after accepting his voluntary~~ resignation. The learned counsel for the applicant relied on the observation of the Principal Bench reported in I 1994 (28) ATC 46 - R.R.Singh Vs. Chief Controller of Defence Accounts (Pension), Allahabad and another I to state that non-availability of records should not stand in his way to get pro-rata pension as it is a known fact that his application was forwarded to State Bank of Hyderabad for the post of Watchman/Peon through proper channel.

9. It is evident from ~~the OA~~ ^{page-7 of the OA} ~~OA~~ that he had obtained permission for registering his name with the Employment Exchange way back in Feb., 1972 and he was trying to get higher post. When he got an opportunity to apply for the post of Watchman/Peon in State Bank of Hyderabad, he took the opportunity to apply for the same and which was also forwarded by the respondents. In view of the above, it can be reasonably concluded that he had resigned only for the sake of joining in State Bank of Hyderabad and not for any other reason. As the records are not available to check whether the resignation letter indicates the purpose for seeking voluntary retirement, it has to be reasonably presumed ^{that} he submitted his voluntary resignation only to take-up the post at State Bank of Hyderabad for which his application

from the available enclosures to the OA which were not disputed

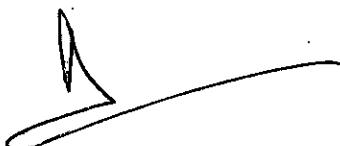


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was forwarded by the respondent authorities. The citation referred to above also is in favour of the applicant. The mere fact of notings in the office order that he had voluntary resigned should not be taken in the face value to mean that he has not resigned to join the State Bank of Hyderabad. As stated earlier, this being the gist of the office order, it may not give the full details which can only be verified from the resignation letter submitted by the applicant, which unfortunately is not availablex as the records were destroyed.

10. In view of what is stated above, as per Sub-Rule(2) of Rule-26 of CCS(Pension) Rules, it has to be held that the applicant has been serving in the State Bank of Hyderabad with proper permission and hence under that rule, he is entitled for counting his service in the respondents organisation ~~and also entitled~~ for pro-rata pensionary benefits for the period of service rendered by him in that organisation if rule exists to grant such pro-rata pension.

11. The next point for consideration is whether he will get arrears of pension as prayed for by him from the date he was released from DLRL. Payment of pension is a continuing cause. This Tribunal is consistently taking the view that if in such belated claims the benefits can be granted only one year prior to the date of filing of the O.A. In view of the above practice, the applicant is entitled for arrears of pro-rata pension only from 5.8.1993 as this OA was filed on 5.8.1994.



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12. The learned Standing Counsel for the respondents apprehends that the period of his service in the respondent organisation may later be counted in S.B.H. also if there is a rule to count such service for pensionary benefits in that organisation. This point has to be considered especially in view of ~~introduction~~ of scheme pension/to Bank Employees. It is not necessary to go into this contention as the Bank authorities are not impleaded in this O.A. However, it is made clear that the Bank authorities ~~will~~ should adhere to the rules in this connection applicable to the Bank employees ~~incorporated in pension scheme~~ if such a request is made by the applicant to the bank authorities.

13. The authorities of State Bank of Hyderabad are free to fix the pay of the applicant taking into account the pro-rata pension granted to him in DLRL organisation for the period he served in that organisation if there is a rule to that effect.

14. In the result, the following directions^{are} given:-

(i) The applicant is entitled for pro-rata pension for the period of service he had rendered in DLRL if a provision for grant of pro-rata pensionary benefits exists.

(ii) Arrears due to pro-rata pension if granted, will be given only from 5.8.1993 i.e. one year prior to the date of filing of this O.A. (this OA was filed on 5.8.1994).

(iii) Counting of service for pensionary benefits in State Bank of Hyderabad has to be decided by the Bank authorities on the basis of the rules in this connection in their pension scheme.

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(iv) The S.B.H. authorities are at liberty to fix the pay of the applicant in that organisation taking note of the pensionary benefits granted to him in DLRL if rule to that effect exists.

15. The OA is ordered accordingly. No costs.

R. Rangarajan

(R. Rangarajan)
Member (Admn.)

Dated 13th Sep., 1995.
Dictated in open court.

Deputy Registrar

grh/spr.

Copy to:-

1. Secretary, Ministry of Defence, Union of India, South Block, New Delhi.
2. The Scientific Adviser to the Ministry of Defence & Director General Research & Development, Director of Personnel, Ministry of Defence, DHQ PO, New Delhi.
3. The Director, Defence Electronics Research Laboratory, Chandrayanagutta, Hyderabad.
4. One copy to Sri. K. Sudhakar Reddy, advocate, CAT, Hyd.
5. One copy to Sri. K. Bhaskara Rao, Adml. CGSC, CAT, Hyd.
6. One copy to ~~-----~~
7. One spare copy.

Rsm/-

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

HON'BLE MR. A. D. GORTHI, ADMINISTRATIVE MEMBER.

HON'BLE MR.

JUDICIAL MEMBER.

ORDER/JUDGEMENT:

DATED: 13/9/ 1995.

M.A./R.A./C.A.NO.

IN
O.A.NO.

T.A.NO. (W.P.NO. 1009/2)

ADMITTED AND INTERIM DIRECTIONS ISSUED.

ALLOWED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

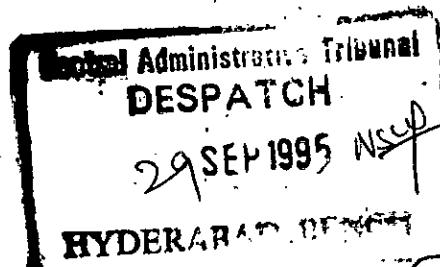
DISMISSED FOR DEFAULT.

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NO ORDER AS TO COSTS.

Rsm/-

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