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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.532 of 1996

DATE OF JUDGEMENT: 11th October, 1996

BETWEEN:

Dr. VIJAYAPURAPU SUBBAYAMMA .. Applicant

and

1. Union of India represented by
its Secretary, Ministry of Defence,
New Delhi,

2. The Chief of Naval Staff,
Naval Headquarters, New Delhi,

3. The Flag Officer Commanding-in-Chief,
Eastern Naval Command, Visakhapatnam,

4. The Chief Controller of Defence Accounts
(Navy) (Pensions),
Allahabad. .. Respondents

COUNSEL FOR THE APPLICANT: SHRI P.B.VIJAYA KUMAR

COUNSEL FOR THE RESPONDENTS: SHRI ~~V.VINOD KUMAR~~ Raghava Reddy, Addl. CGSC

CORAM:

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

JUDGEMENT

(ORDER PER HON'BLE **SHRI R.RANGARAJAN, MEMBER(ADMN.)**

Heard Shri P.B.Vijaya Kumar, learned counsel for the applicant and Shri ~~V.Vinod Kumar~~ Raghava Reddy, learned standing counsel for the respondents.

entitled for pensionery benefits and these rules are applicable only to the employees who retire on or after 1.1.86. Since the applicant had retired from service on 30.11.80 in quasi-permanent status earlier to 1.1.86, the respondents submit that the liberalised pension rules are not applicable to the applicant herein though she had put in 12 years, 2 months and 9 days of service. This would mean that the liberalised pension rules are to be applied prospectively and not retrospectively. In this connection, the observation of the Supreme Court in the reported case 1996(2) SLR 40 (M.C.Dhingra v. Union of India) is very relevant. The govt. of India, in that case issued a memorandum dated 31.3.82 whereby it was decided to tag the previous service rendered in State service for computation of pension when absorbed in Central Govt. It is stated in the memorandum that the orders came into force with effect from the issue of the memorandum and cases of all such Govt. servants retiring on that date and thereafter will be regulated accordingly. The applicant in that case who joined in the state service on a temporary basis and thereafter was selected as a Railway Magistrate and joined the Central Service. He retired on 1.2.73. The applicant requested for tagging of his previous service in the State govt. in terms of the memorandum dated 31.3.82. That request was rejected. He filed OA 2335/89 in C.A.T, New Delhi. That OA was ~~disposed~~ dismissed by order dated 19.10.94 on the ground of delay. Hence he filed an SLP which was heard and the above referred reported judgement was delivered by the Apex Court on appeal. In the appeal, it was held by the

temporary quasi-permanent Govt. servants who retire after rendering not less than 20 years of service and hence the applicant is not eligible to get the pro-rata pension. She was informed by the impugned letter No.CE/1528/SHO/DR VS, dated 25.3.96 that her claim for pensionery benefits cannot be entertained as per the then orders.

3. Aggrieved by the above, she has filed this O.A. for setting aside the impugned order No.CE/1528/SHO/DR VS, dated 25.3.96 (Annexure A-I) of R-3 and grant her pensionery benefits with interest at 18% per annum from the date of her eligibility.

4. Sub-rule 2(b) of Rule 49 of CCS (Pension) Rules, 1972 provides for pro-rata pension for those who had completed the qualifying service of 10 years subject to a minimum pension of Rs.375/- per month. This rule in my opinion does not indicate that the rule is applicable only to a permanent employee. The basic frame-work of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. If that is the object, then rejecting the case of the applicant when the rule provides for pro-rata pension on the mere technicality of the service being a quasi-permanent one cannot be viewed lightly.

5. It is stated in the reply that the liberalised pension rules came into effect from 1.1.86 and the individuals who have completed 10 years of service are

8. In the reported case, it is not mentioned whether the Government was thinking of tagging the service from 1973 onwards or not. The consideration by the Govt. of India in regard to the tagging of the earlier service could have been started much after 1973 and a final decision was taken in March 1982. The liberalised pension scheme dated 1.1.86 has been started from the date of formation of the 4th Pay Commission. Hence the liberalised pension scheme was also initiated earlier to 1.1.86 and the scheme was formalised with effect from 1.1.86. It is seen that the applicant was representing ~~his~~ her case even much earlier than 1.1.86 and the respondents were considering her case earlier to 1.1.86, though it was rejected finally for the above stated reasons. Hence it has to be held that the deliberation in this case also started earlier to 1.1.86 and hence the distinguishing of this case from the reported case for the reasons submitted by the learned counsel for the respondents is not in order.

9. When the benefits of the revised terms and conditions in the memorandum of the Govt. of India dated 16.6.67 to protect the pensionery benefits which the Central Govt. servants had earned before their absorption in public undertakings was restricted only after the issue of that memorandum, the Apex Court had held that such restriction would be defeating the very object and purpose of the revised memorandum and contrary to fair play and justice, (1993 (24) ATC 102 - T.S.THIRUVENGADAM v. Secretary to Govt. of India). It was further held in that

Apex Court that the cut off date in the office memorandum for counting the service only to those retired after 31.3.82 i.e, the date of the issue of the memorandum is arbitrary, violating Article 14. It was further ordered that the applicant in that reported case will be entitled to the pro-rata pension form March, 1982, though he retired earlier to 31.3.82.

6. The present case is similar. The respondents submit that the applicant herein cannot be given the benefit of liberalised pension as the liberalised pension scheme came into being only from 1.1.86 and the applicant had retired earlier to that date. In view of the decision of the Supreme Court in Dhingra's case, the applicant herein cannot be denied the payment of pro-rata pension from 1.1.86 on the ground of the applicant having retired earlier to 1.1.86, will be arbitrary violating Article 14. Hence the applicant is to be given the pro-rata pension from 1.1.86.

7. The learned counsel for the respondents submitted that the Govt. of India had been considering the case of granting pro-rata pension on a reciprocal basis even earlier to 31.3.82 in Dhingra's case. Hence, on that context, the pro-rata pension was allowed by the Apex Court. The present case was initiated only after 1.1.86 and hence the present case can be distinguished from the reported case.

Armed Forces, with effect from 31.3.72, there appears to be no hitch to grant her the substantive posting against that post.

11. The next contention is that the present OA is barred by limitation. It is stated that the applicant had approached this Tribunal by filing this OA on 22.4.96 i.e, 10 years after the introduction of the liberalised pension scheme. Hence the OA is barred by limitation.

12. The applicant kept on representing her case right from 23.4.84 onwards as can be seen from the para 5 of the reply. When she did not get any satisfactory reply immediately after the introduction of the liberalised pension scheme in the year 1986, she could have approached this Tribunal. It is stated by the learned counsel for the applicant that she was under the impression that the relief will be granted to her by the respondents themselves and hence she did not approach the judicial forum. When her request was rejected by the impugned letter dated 25.3.96, she approached this Tribunal by filing the O.A. on 22.4.96. This is not a satisfactory explanation for condoning the delay. She was even informed earlier in February 1995 itself that she is not entitled for pension. Though the contention of the respondents in regard to limitation has some force, the payment of pension cannot altogether be denied to her in view of the fact that payment of pension is a continuous process. This Tribunal is consistently holding the view that in case of continuing cause, the

reported case that the revised benefits are not a prospective one but will have retrospective effect and will be applicable even to those "who have rendered pensionable service prior to coming into force of that memorandum to claim the benefits under the said memorandum". In view of that pronouncement also the pro-rata pension to the applicant in this case cannot be denied.

10. It is stated in para 4 of the reply that no mention was made for appointing the applicant in a substantive capacity while the cases of the medical staff belonging to the Family Welfare Centre, Visakhapatnam was considered. It is stated that this omission was perhaps due to the fact that the applicant had retired by that time when the proposal for conversion in 1983 was made. If such an omission had been made to consider the case of the applicant for appointment in a permanent post, even if she had retired, it cannot be said that it is by oversight. It is a costly omission as it denies her permanent status when staff working with her during the time of her service were granted permanent status. Hence if there is a technical barrier to grant her pro-rata pension as she has not been made permanent, the lacuna should be set right now by reopening her case and grant her permanent status. As it is stated in the order dated 15.10.74 that she is brought on a quasi-permanent capacity in the post of whole-time Lady Medical Officer (Class-II Gazetted), Family Planning

relief is to be given one year prior to the filing of the OA, even though the OA is filed belatedly. The learned counsel for the applicant submitted that the pro-rata pension may be given from an earlier date considering the fact that she has been repeatedly representing her case even if the pro-rata pension cannot be granted from 1.1.86. I do not find any reason to deviate from the principle laid down by this Tribunal to grant monetary benefits from one year prior to filing of the OA in continuing causes in case the OA is filed belatedly and law of limitation is attracted.

13. In view of what is stated above, the applicant has made out a case to grant her pro-rata pension. But that pension as stated earlier is to be restricted from a period one year prior to the filing of this O.A.

14. In the result, the following direction is given:-

R-1 and R-2 are directed to grant the applicant pro-rata pension, for the services rendered by her as Lady Medical Officer in the Family Welfare Centre, Visakhapatnam from 22.9.68 to 30.11.80, with effect from 22.4.1995 i.e, one year prior to filing of this OA (This OA was filed on 22.4.96). Time for compliance is three months from the date of receipt of the judgement.

15. The OA is ordered accordingly. No costs.