

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.273/99

Date of order: 28/4/2000

Sachu Shaishi Bhushan Gupta, S/o late Sh.B.B.Gupta, R/o 118/274 Agrawal Farm, Mansarovar, Jaipur, employed as Director of Inspection, DG(S&D) under Deptt. of Supply, Govt of India, Parliament Street, New Delhi-1.

...Applicant.

Vs.

1. Union of India through Secretary, Deptt. of Supply, Govt of India, Secretariat Bldg, New Delhi.
2. Director General, Supplies & Disposals, Deptt. of Supply, Jeevan Tara Bldg, Parliament Street, New Delhi.
3. Chief Controller of Accounts, Deptt. of Supply, Akbar Road Btments, New Delhi.
4. Central Pension Accounts Officer, Min. of Finance, Trikoot II Complex, Bhikaji Rama Place, New Delhi.

...Respondents.

Applicant present in person.

Mr.S.S.Hasan - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

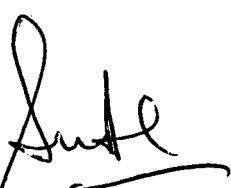
Hon'ble Mr.N.P.Nawani, Administrative Member.

PEF HON'BLE M/S.P.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1995, the applicant makes the following prayers:

- (i) to give weightage of 5 years for pension w.e.f. 19.3.88 in accordance with Rule-30 of CCS (Pension) Rules.
- (ii) to count 3 years service rendered by the applicant from 2.9.1954 to 27.9.1957 under M.P.Govt for pension purposes in accordance with Rule 14 of the CCS (Pension) Rules; and
- (iii) to revise the pension and communicate to Hardwar Branch of the State Bank of India.

2. In brief facts of the case as stated by the applicant are that he was retired on 31.5.81 from the post of Director Inspection Indian Inspection Service Class-I and he is getting pension since then. After implementation of the 5th Pay Commission Report, the applicant submitted an application dated 15.11.97 to the Director General(S&D) requesting for revision of pension and for giving weightage of added years in the qualifying service for pension, as per Rule 30 of CCS(Pension) Rules. Thereafter, number of reminders were sent but the applicant was not allowed the revision of pension accordingly. It is stated that he <sup>had</sup> also served for 3 years with Govt. of Madhya Pradesh but the period of 3 years of service



rendered by the applicant under M.P Govt was not counted for the purpose of pension. Therefore, the applicant filed this C.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that the applicant has raised the issue for grant of 5 years of weightage after 15 years of his retirement and counting of past services rendered by the applicant with M.P Govt from 2.9.54 to 27.9.57, i.e. after 40 years, therefore the C.A is belated and barred by limitation. It is further stated that the case of the applicant regarding weightage of added qualifying service is not covered under the provisions of Rule 30 of the CCS(Pension) Rules, therefore, the applicant is not entitled to the relief sought for. It is also stated that the M.P Govt did not agree to accept the pensionary liability of the applicant for the period in question, therefore, the benefit of past service could not be given to the applicant and the applicant has no case for interference by this Tribunal.

4. Heard the applicant and the learned counsel for the respondents.

5. Applicant in person argued that he is entitled to weightage of 5 years under Rule 30 of CCS(Pension) Rules and he is also entitled to count the past services rendered by him under the M.P.Govt for 3 years for the purpose of pension.

6. The learned counsel for the respondents has opposed the reliefs on the ground of delay and latches and argued that the applicant agitated the issues very late. Therefore, the claims of the applicant are barred by limitation.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

8. Govt of India had issued a Circular No.3(20)Pen(A)/76 dated 31.3.82 which is reproduced as below:

The Govt servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories:

1. Those who having been retrenched from the service of the Central/State Govt secured on their own employment under State/Central Govt either with or without interruption between the date of retrenchment and the date of new appointment;

2. Those who while holding temporary posts under Central/State Govt apply for posts under State/Central Govt through proper channel with proper permission of the Administrative Authority concerned;

3. Those who while holding temporary post under Central/State Govt apply for posts under State/Central Govts direct without the permission of the Administrative



Authority concerned and resign their previous post to join the new appointments under State/Central Government.

9. In case pension is denied, the filing of C.A for such a relief is within limitation as the applicant in such case is having recurring cause of action. Therefore, we do not agree with the contention of the learned counsel for the respondents that the claim is barred by limitation.

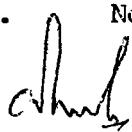
10. Regarding merit of the case, it is contended by the learned counsel for the respondents that the applicant retired before 31.3.82, therefore, he is not entitled to count his past service rendered under M.P. Govt for the purpose of pension. According to the above circular, we do not find any force in the contention. It has been held by Hon'ble Supreme Court in M.C.Dhingra Vs. UOI & Ors., Civil Appeal No.3371 of 1996 decided on 5.2.96 published in (1996) 33 ATC 338, that "all the persons who rendered temporary service prior to their joining the Govt of India service have been given the benefit of fixation of the pension payable by tagging the temporary service. The cut-off date is arbitrary violating Article 14 of the Constitution of India. Having grouped all the similarly circumstanced employees, fixing the cut-off date and giving benefit to those who retired thereafter is obviously arbitrary. In similar circumstances, following the ratio in D.S.Nikara Vs. UOI, this court held in the case of R.L.Marwaha Vs. UOI that such a restriction is arbitrary violating Article 14. On the facts and circumstances, we find that the restriction imposed in clause 4 of the circular is violative of Article 14. It is, therefore, unconstitutional."

11. On the basis of above legal proposition, we are of the opinion that the applicant is entitled for counting of his past services of 3 years for the purpose of pension which he rendered under the M.P.Govt.

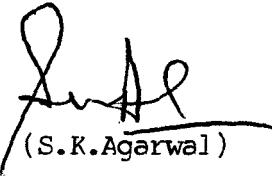
12. As regards the other relief relating to 5 years of weightage, the applicant has not been able to make out a case that he fulfills one of the two conditions incorporated in Rule 30 of the CCS(Pension) Rules. He has not produced the recruitment rules under which he was recruited and which would have established that the minimum prescribed qualifications were same and similar to those mentioned in condition (a) of the said rule or that his post was such that candidates of more than 25 years of age are normally recruited so as to satisfy condition (b) in the said rule. The case of the applicant is, therefore, not covered under Rule 30 of the CCS(Pension) Rules and in our considered view the applicant is not entitled to weightage of 5 years as qualifying service for pension.

13. We, therefore, allow the O.A partly and direct the respondents to revise the pension of the applicant after adding the service rendered by him under the M.P. Government. The applicant shall also be entitled to arrears of pension but he will be entitled for the arrears only w.e.f. 10.6.96 i.e. 3 years prior to filing of the O.A. The whole exercise shall be completed by the respondents within 3 months from the date of receipt of a copy of this order.

14. No order as to costs.

  
(N.P.Nawani)

Member (A).

  
(S.K.Agarwal)  
Member (J).