

CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH  
CIRCUIT AT INDORE

Date of Decision : 2.9.2003

O.A. No. 658/1998.

Vishram S/o Kishanlal Chouhan, aged 60 years, Postal Assistant (Retd.) r/o Village Bhagora, Post Mhow.

... Applicant.

versus

1. Union of India through Secretary, Postal Services Boards Department of Posts, New Delhi.
2. Post Master General, Indore Region, GPO Compound, Indore 452 001.
3. Deputy Director of Accounts (Postal), Bhopal.
4. Superintendent of Post Offices, Indore Mofussil Division GPO Compound, Indore 452 001.

... Respondents.

Shri D. M. Kulkarni counsel for the applicant.  
Shri Sajid Akhtar ~~was~~ Proxy counsel for  
Shri B. Dasilva counsel for the respondents.

CORAM

Hon'ble Mr. V. K. Majotra, Administrative Member.  
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :  
(per Hon'ble Mr. J. K. Kaushik)

Shri Vishram has filed this OA under Section of the Administrative Tribunals Act, 1985, praying therein that the respondents may be directed to make the payment of pension to him from 01.06.1995 and also make payment of DCRG for the temporary service rendered by him along with interest.

*Dr*

2. We have heard the learned counsel for the parties at a considerable length and have carefully perused the records of this case as well as the relevant rules.

3. This is a unique case. The indubitable facts of this case which are necessary for adjudication for the controversy, are that the applicant while working as Sub-Post Master, Ranija Sub Post Office, was faced with a disciplinary case under Rule 14 of the CCS (CCA) Rules, 1965. He was awarded a penalty of compulsory retirement vide memo dated 03.09.1981. His appeal against the same was rejected. Subsequently, he made a Mercy Petition to the President of India who ordered for his re-employment as a fresh recruit in relaxation of normal rules of recruitment so that he may be able to start his life afresh vide order dated 8.12.1983.

4. The applicant was appointed as Postal Assistant temporarily as a fresh recruit and his past service was not counted in the department for any purpose vide order dated 02.03.1984. He joined his duties on 07.03.1984. He was also given fixation at the minimum of the scale i.e. at Rs.260/- in the pay scale of Rs.260-480. He was superannuated with effect from 31.05.1995 on attaining the age of 58 years. The paper formalities in respect of his retiral dues were got completed. It was only after about 7 months that he was paid the amount of leave encashment.

5. There was a lot of exchange of communication between the applicant and the authorities and a decision was taken not to grant him pensionary benefits on the pretext that it is not possible to revise any of the order relating to pensionary benefits already granted to him on his compulsory retirement w.e.f. 3.9.81. From the applicant side, an insistence was made that as per the Government of India decision No.2 below Rule 18 of the CCS (Pension Rules) 1972 (for bravity, the Rules), the applicant was eligible to earn the second pension in respect of his temporary service. On the side of the respondents, the consistent ~~xxx~~ stand has been that as per Rule 7 of the CCS(Pension Rules) no benefits for the period of temporary service rendered by him on his re-employment can be extended to him.

6. Learned counsel for the parties have reiterated their stand, taken in their pleadings and the context has been between Rule 7 and Rule 18. Rule 18 was being relied upon by the learned counsel for the applicant and there was constant hammering on the contents of Rule 7 on behalf of the respondents. To appreciate the controversy, it would be expedient to extract the contents of relevant rules as under :-

"Rule 7 - Limitation on number of pensions.

- (1) A Government servant shall not earn two pensions in the same service or post at the same continuous service.
- (2) Except as provided in Rule 19, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment.

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Rule 18- Government of India's Decision.

2. Cases can occur where a permanent Government servant who has been granted invalid pension under Rule 38 or compensation pension on abolition of permanent post under Rule 39 of the CCS (Pension) Rules, 1972, at a comparatively younger age, is re-employed subsequently and after rendering temporary service of not less than 20 (now 10) years is either declared to be permanently incapacitated for further service, or finally retires from service on attaining the age of superannuation. Such a servant will become eligible to earn a second pension in respect of his temporary service. A question arises whether such a person will be eligible to exercise the option available to a re-employed pensioner under Sub-rule (1) of Rule 18 of the CCS (Pension) Rules, 1972, which is to be exercised by a re-employed pensioner within three months of his confirmation in a permanent post. The exercise of such option enables him either -

- (a) to continue to draw the pension (or to retain the gratuity sanctioned for earlier service) in which case his former service shall not count as qualifying service ; or
- (b) to cease to draw his pension and refund the pension and pensionary equivalent of retirement benefits already drawn, in which case the previous service will count as qualifying service.

The condition of holding a post in a substantive capacity for the purpose of eligibility to pension ~~and xx if xx then xx~~ having been relaxed in the case of a Government servant retiring on superannuation pension or on being declared to be permanently incapacitated for further service, after rendering temporary service of not less than 20 (now 10) years, the said condition may also be deemed to be relaxed for the purpose of bringing such a person within the ambit of Rule 18 of the CCS (Pension) Rules, 1972. Therefore, a Government servant in receipt of invalid or compensation pension in respect of his earlier service, if subsequently re-employed in a pensionable post and retiring as aforesaid will be eligible to exercise option under sub-rule (1) of Rule 18 of the CCS (Pension) Rules, 1972.

Rule 35 - Superannuation Pension.

A superannuation pension shall be granted to a Government servant who is retired on his attaining ~~xx~~ the age of compulsory retirement.

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Rule 36 - Retiring pension.

A retiring pension shall be granted -

- (a) to a Government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of 1( ) Rule 48 2(or 8-A) of these rules, or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations; and
- (b) to a Government servant who, on being declared surplus, opts for voluntary retirement in accordance with the provisions of Rule 29 of these rules.

Rule 49 - Amount of pension.

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.

- (b) in the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than (rupees three hundred and seventy-five) per mensem ;
- (c) notwithstanding anything contained in clause (a) and clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54."

7. Before adverting to the legal aspect of the matter, it would be relevant to mention here the admitted facts of this case. It is admitted that the applicant was given fresh appointment as a temporary postal assistant, and he rendered continuous service for 11 years and 2 months and 24 days and retired on superannuation. While giving him fresh appointment it was specifically annotated in the appointment letter that his past services will not

be counted in the department for any purpose. There is also no dispute that in normal course if one renders more than 10 years of service even on temporary basis would be entitled to the pensionary benefits in accordance with Rule 49 of the said rules. It is also the fact that he has been granted the pensionary benefits in respect of his previous service in view of the penalty of compulsory retirement imposed on him.

8. Now adverting to the interpretation of the relevant rules. At the very outset, we would like to mention that when a person is compulsorily retired from service he gets the compulsory retirement pension as per Rule 49 of the CCS (Pension) Rules. No Rule prescribes that there is any specified period of qualifying service for which one must necessarily have rendered that service. It is not necessary that the compulsory retirement pension should be equal to full pension. On the other hand, one could be compulsorily retired from service without any restriction as to service rendered by him. Thus, the concept of compulsory retirement pension is quite different from normal retirement pension or superannuation pension. Rule 35 defines superannuation pension which is the pension granted to a Government servant who is retiring on attaining the age of compulsory retirement. Retiring pension is a pension which one gets when he retires or is retired in advance of age of compulsory retirement in accordance with Rule 48 and 56 or on account of the becoming surplus. These concepts are quite distinct from the compulsory retirement pensions.

9. Now we come to the Rule 7 of the CCS (Pension) Rules. The natural meaning of the Rule 7 (21) of CCS (Pension) Rules,

1972, is that a government servant cannot earn 2 pensions in the same service or post at the same time or by the same continuous service. In earlier service the applicant was a permanent employee and that service cannot be counted for any purpose. It is difficult to understand as to how the temporary service of the applicant could be construed at the same service or same post at the same time. The question of continuous service also cannot be accepted. Afterall the applicant has been given a fresh appointment with a specific mention in his appointment letter that his past service would not count for any purpose. It is not understood as to how limitation prescribed in Rule 7 would not come in the way of the applicant. The applicant was in continuous service. He is not in the same service, he is in a fresh employment. Thus, we are of the firm opinion that the restriction prescribed in Rule 7(1) has absolutely no application to his case.

10. Nextly considering the Rule 7 (2) of the CCS (Pension) Rules, this also has no application to the applicant's case because neither the applicant has retired on superannuation pension nor on a retiring pension. In fact he has been granted compulsory retirement pension which is distinct from superannuation pension or retiring pension as per our aforesaid discussion. Thus, the inescapable conclusion would be that Rule 7 (2) of the CCS (Pension) Rules has absolutely not applicable to the case of the applicant and the retiral dues cannot be denied by applying all these provisions.

*DR*

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11. Now coming to the Instructions No.2 below Rule 18 of the CCS (Pension) Rules, it has been embarked on behalf of the learned counsel for the applicant that the applicant is entitled for pension. On behalf of the ~~xxxxxx~~ respondents, it has been submitted that these instructions only applies to the cases where a person has been declared to be permanently incapacitated for further service or finally retires from service on attaining the age of superannuation. We find there is a substance in the argument of the learned counsel for the respondents that ~~xxxxxxxxxxxxxxxxxxxxxx~~ the applicant cannot get any benefit as per the said instructions.

12. We have waded the pensionary rules and as has been said above that a temporary government servant is entitled to pensionary benefits on completion of the 10 years of service as per Para 49 of the rules and instructions issued therein. These rules as we have discussed above applies to the case of a temporary government servant also. Therefore, we are of the firm opinion that the applicant is entitled for the normal ~~pension~~ proportionate pension which is payable on superannuation and the compulsory retirement pension already granted to him would not obstruct the grant of normal pension to the applicant.

13. Examining the matter from other angle by now the concept of the pension is well settled. The pension and the other retiral benefits are not a bounty but are constitutional rights of an individual. The basic concept of the grant of pensionary benefits is that the pension is paid in consideration of past satisfactory service. It may be considered to be as a certain part of

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15. The Registry is directed to send a copy of this order under its seal and signature to the Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pension for their information and issuance of suitable instructions if expedient.

*Dr. Kaushik*  
(J. K. KAUSHIK)  
MEMBER J)

(J. K. KAUSHIK)  
MEMBER J)

V. K. Majtra  
( V. K. MAJCTRA )  
MEMBER (A)

( V. K. MAJCTRA)  
MEMBER (A)

पृष्ठांकन सं. अे/व्या.....	जवलपुर, दि.....
परिविविल अच्छे जित.....	
(1) रामेश्वर, रामेश्वरा, गाव उत्तोसिएश्वर, जवलपुर	
(2) आमेश्वर, आमेश्वरी.....	के काउंसल
(3) एवं ते कुम्हे रामेश्वर,.....	के काउंसल
(4) शंखेश्वर, शंखेश्वरा, जवलपुर, बारामीठ	
संघा एवं आवश्यक कार्यवाही देत	—

Om Kulkarni <sup>Adle</sup> Sidotek  
Baladeva <sup>Adle</sup> Bop

~~John C. St. John~~ 161903