

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

05.02.2013

OA No. 43/2011 with MA^{37/}/2011

Mr. Anupam Agarwal, Counsel for applicant.

Mr. Umesh Kumar Saini, Counsel for respondents.

Heard learned counsel for the parties

The OA as well as MA are disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 43/2011
WITH
MISC. APPLICATION NO. 37/2011

Jaipur, the 05th day of February, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Dr. L.M. Bhandari son of Shri Sardar Mal Bhandari aged about 70 years, resident of 568, Mahavir Nagar I, Tonk Road, Jaipur. Retired from Defence Laboratory, Ratanada Palace, Jodhpur.

... Applicant

(By Advocate : Mr. Anupam Agarwal)

Versus

1. Union of India through the Secretary, Ministry of Defence, Defence Research and Development Organization, New Delhi.
2. The Account Officer, Office of Controller of Defence Accounts, R&D, New Delhi.
3. The Director, Defence Laboratory, Ratanada Palace, Jodhpur, Rajasthan.

... Respondents

(By Advocate: Mr. Umesh Kumar Sharma)

ORDER (ORAL)

The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as Senior Scientific Assistant at Defence Laboratory, Defence Research & Development Organization, Ministry of Defence, Jodhpur after due selection on 15.11.1962. He continued to work there since then till 04.08.1973 without any hindrance.

2. That in January, 1972, he applied for the post of Chemist through proper channel in M/s Hindustan Zinc Limited, Udaipur,

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a Government of India undertaking. On being selected, he submitted requisite notice to relieve him from duty so as to join the Hindustan Zinc Limited (Annexure A/4).

3. That the applicant was relieved on 04.08.1973. Thereafter, he joined the Hindustan Zinc Limited on 06.08.1973.

4. Thus the applicant served the Defence Laboratory, Government of India, for a period of more than 10 years. As such, he was entitled for the grant of pension and other pensionary benefits as were admissible to him at that time. The respondents for the reasons best known to them without any justified reasons never informed nor asked the applicant to complete formalities in this regard. The applicant since working in other organization could not know about such entitlements.

5. He retired from Hindustan Zinc Limited with effect from 31.03.1998. After the retirement, one of his well-wisher suggested that he being a retired government servant is entitled for pension. On getting this information, the applicant submitted a representation to the respondents dated 19.08.2010 for grant of retirement pension (Annexure A/6).

6. The said representation was replied vide letter dated 16.09.2010 (Annexure A/2) that there is no service record of the applicant available with the respondents. The applicant thereafter again requested the Director, Directorate of Pension

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and Pensioners' Welfare on 04.10.2010 but the respondents through their communication dated 16.11.2010 reiterated their stand (Annexure A/1).

7. The learned counsel for the applicant argued that since the applicant had served the respondents for more than 10 years, therefore, he is entitled for pension as per rules.

8. The learned counsel for the applicant has also filed an MA No. 37/2011 for condonation of delay and in this regard he referred to the judgment of the Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India & Others**, 1995 (5) SCC 628 and he argued that since loss of pension is a continuing action, therefore, there is no delay and even if the Tribunal consider it a case of delay, it be condoned.

9. He further submitted that the respondents in their reply have now stated that the pension could not be sanctioned to the applicant because he resigned from the service of the respondents under the garb of certain domestic reasons and that this resignation cannot be treated as a retirement. With regard to this objection of the respondents, the learned counsel for the applicant argued that it was a technical resignation because he had applied for the post of Chemist in Hindustan Zinc Limited through proper channel. Therefore, it should be treated as a retirement rather than resignation on domestic grounds. He further argued that pension is not bounty, it is a valuable right and therefore, it will not depend upon the sweet

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will of the respondents to grant it or not to grant it. To support his averments, he referred to the following judgments of the Hon'ble Supreme Court:-

- (1) U.P. Raghavendra Acharya & Others vs. State of Karnataka & Others, 2006 (9) SCC 630
- (2) State of W.B. vs. Haresh C. Banerjee & Others 2006 (7) SCC 651

10. He further argued that relief can be moulded/restricted to the payment of arrears for last three years only in such cases. He referred to the Government of India decision with regard to Rule 26 of the CCS (Pension) Rules 1972 such a resignation is nothing but technical formality. He also referred to Rule 37 of CCS (Pension) Rules 1972 which deals with pension on absorption in or under a Corporation, Company or Body. Therefore, he argued that the respondents be directed to sanction the applicant pension for the period for which he has worked with the respondent alongwith arrears thereof.

11. On the contrary, learned counsel for the respondents argued that the applicant has filed this OA after a lapse of very long period of 37 years and on account of this extra-ordinary delay, the OA deserves to be dismissed.

12. He further argued that Central Administrative Tribunal came into existence in the year 1985 and as per the provisions, it can grant relief only for the period with effect from 1985 or three years back. The applicant in this OA is seeking relief for the period from 1962 to 1973. Therefore, this Tribunal has no

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jurisdiction to adjudicate this matter and, hence, it should be dismissed.

13. He further argued that the applicant is guilty of concealing the true facts. He submitted that the applicant applied for his new appointment in Hindustan Zinc Limited without intimating the answering respondents and to avail higher benefits. He resigned the services of the respondents under the garb of certain domestic reasons and in this connection, he referred to the applicant's resignation letter dated 22.06.1973 (Annexure R/3). He submitted that the resignation of the applicant on certain domestic reasons cannot be treated as retirement. Therefore, as per the existing rules, he is not entitled for any pension and to support his averments, he referred to Rule 26 (1) of CCS (Pension) Rules, 1972, which is quoted below:-

"26 Forfeiture of service on resignation

- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service."

14. Learned counsel for the respondents further argued that the applicant's resignation dated 22.06.1973 was accepted by the respondents vide their Memorandum dated 04.08.1973 (Annexure R/5). The applicant was discharged from service and strength of Jodhpur with effect from 04.08.1973.

15. The learned counsel further submitted that the applicant had not applied through proper channel for any appointment

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outside the respondent department while on duty. The Department was not aware of the joining the Hindustan Zinc Limited after submitting resignation under the garb of certain domestic reasons. The applicant has concealed this fact of joining Hindustan Zinc Limited from the Department.

16. He referred to **Rule 26(1) of CCS (Pension) Rules**, which provides for forfeiture of service on resignation i.e. the Government servant will not be entitled for any pension, gratuity or terminal benefits (Annexure R/7). The learned counsel also submitted that the applicant had earlier requested for pensionary benefits vide his letter dated 29.07.1981. He was given reply vide letter dated 26.08.1981 (Annexure R/8). In this letter also, the respondents have informed that he is not entitled to any terminal benefits because he did not apply through proper channel for appointment in Ms. Hindustan Zinc Limited, Udaipur and that he resigned on domestic grounds. This letters also shows that similar information was given to the applicant earlier also. Therefore, it was stated in this letter that no further representation on the subject would be entertained. Hence, he argued that the claim of the applicant that he was not aware that he was entitled for pensionary benefits from the respondents till 2010 and hence the delay caused in filing the OA is not correct. Therefore, the learned counsel for the respondents argued that the OA has no merit and it should be dismissed.

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17. Heard the learned counsel for the parties, perused the relevant documents and perused the case law referred to by the learned counsel for the applicant.

18. With regard to the averment of the learned counsel for the respondents that the OA is barred by limitation, the learned counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India & Others** (Supra) and argued that the period of limitation would not apply in this case. In the application of condonation of delay, the applicant has stated that he did not know with regard to the benefits of pension for the period he served with the respondents. Therefore, he could not file OA within time. From the perusal of Annexure R/8, which is a letter dated 26.08.1981 from the respondents to the applicant with regard to his pension benefits, in this letter they have referred to the application of the applicant dated 29.07.1981 with regard to pensionary benefits and have informed him that he did not apply through proper channel in Ms. Hindustan Zinc Limited, Udaipur and also severed all his connections with the Government of India by resigning on domestic grounds. Therefore, he is not entitled to receive any terminal benefits whatsoever. In the same letter, he was also information that decision has already been informed to the applicant earlier and, therefore, no representation on the subject would be entertained. This letter shows that the applicant was well aware that he was entitled for the benefits of pension from the respondent department way back in 1981 or even earlier.

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Therefore, his contention in the MA for condonation of delay as well as in the OA that he was not aware of his entitlement of his pension till about 2010 is not correct. The applicant has not rebutted this documents in this rejoinder filed to the reply on 10.05.2012 and also rejoinder to the MA dated 10.05.2012. Under these circumstances, the ratio decided by the Hon'ble Supreme Court in the case of M.R. Gupta vs. Union of India & others (Supra) will not be applicable under the facts & circumstances of the present case. Thus I find that OA is barred by limitation and, therefore, the MA for condonation of delay in filing the OA is dismissed.

19. Even on merit, the applicant has failed to make out any claim. It is not disputed that the applicant resigned vide letter dated 22.06.1973 (Annexure R/3). The perusal of this resignation shows that the applicant resigned due to certain domestic reasons. It nowhere mentions that since he has been selected in Hindustan Zinc Limited for which he had applied through proper channel and, therefore, he is putting this resignation. Moreover, the learned counsel for the respondents has categorically stated that the applicant had not applied through proper channel. The applicant in his OA had annexed a letter dated 19.06.1973 (Annexure A/4) with a subject "Request for retirement from D.L.J.". Even this letter has been withdrawn by the applicant in his rejoinder to the reply dated 10.05.2012. In Para No. 3 of the rejoinder, the applicant has stated that "in view of it the applicant wants to withdraw Annexure A/4 with due apology." Besides the applicant has not

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been able to show any record which could establish that he had applied through proper channel for appointment in Ms. Hindustan Zinc Limited, Udiapur. The respondents on the other hand way back in 26.08.1981 informed the applicant that he did not apply through proper channel for appointment in Ms. Hindustan Zinc Limited, Udaipur. The Rule 26 (1) and 26(2) of CCS (Pension) Rules, 1972 are quoted as follows:-

"26 Forfeiture of service on resignation

- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service."
- (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

In this case the applicant has not applied through proper channel or with proper permission from the respondent department for appointment in Hindustan Zinc Limited. Therefore, the provisions of Rule 26(2) of CCS (Pension) Rules, 1972 would not apply in this case. On the contrary, in the case of the applicant, Rule 26(1) of the CCS (Pension) Rules, 1972 would apply. Since the applicant resigned from service on personal ground, he is not entitled for pension and other terminal benefits from respondents.

20. I have carefully perused the judgment of the Hon'ble Supreme Court in the case of **U.P. Raghavendra Acharya & Others vs. State of Karnataka & Others**, 2006 (9) SCC 630,

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as referred to by the learned counsel for the applicant. Para nos. 26 and 31 of the judgment are quoted below:-

"26. These appeals involved the question of revision of pay and consequent revision in pension and not the grant of pension for the first time....."

31. The appellants had retired from service. The State therefore could not have amended the statutory rules adversely affecting their pension with retrospective effect."

Thus from the perusal of the judgment, it is clear that the question before the Hon'ble Supreme court in this case was with regard to the revision of pay and consequent revision in pension and not the grant of pension for the first time. While in the present OA, the question is with regard to admissibility of the pension under the existing rules to the applicant. Therefore, in my opinion the ratio decided by the Hon'ble Supreme Court in the case of **U.P. Raghavendra Acharya & Others vs. State of Karnataka & Others** (supra) does not apply in the facts & circumstances of the present OA.

21. I have also carefully perused the judgment of the Hon'ble Supreme Court in the case of **State of W.B. vs. Haresh C. Banerjee & Others**, 2006 (7) SCC 651. In this case, the question before the Hon'ble Supreme Court was with regard to the validity of Rule 10 (1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971. The Rule 10(1) of the State Rules provides for withholding of pension in certain cases. Para 3, 8 & 9 of the judgment are quoted below:-

"3. The High Court by the impugned judgment has held Rule 10(1) to be ultra vires the provisions of Articles 19(1)(f) and 31(1) of the Constitution. It was held that the pension was a property and its payment does not depend upon the discretion of the Government."

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"8. Rule 10(1) is the authority of law under which the pension could be withheld on compliance with stipulations of the rule. We are unable to appreciate how such a rule could be held ultra vires even at a point of time when pension was a property to which Article 19(1)(f) was applicable."

"9. In view of the above, we set aside the impugned judgment to the extent it declares Rule 10(1) ultra vires. The appeal is allowed accordingly."

Thus from the perusal of the judgment of the Hon'ble Supreme Court in the case of **State of W.B. vs. Haresh C. Banerjee & Others** (supra), it is clear that the Hon'ble Supreme Court has held that Rule 10(1) is the authority of law under which pension could be withheld on compliance with stipulation of the rule. The Hon'ble Supreme Court further observed that how such a rule could be held ultra vires even at a point of time when pension was a property to which Article 19(1) (f) was applicable. Therefore it upheld validity of Rule 10(1) in this judgment. In the present OA, the applicant has not been sanctioned pension according to the provisions of Rule 26 (1) of the CCS (Pension) Rules, 1972 and validity of Rule 26 (1) of the of the CCS (Pension) Rules, 1972 is not under challenge in the present OA. Therefore, the action of the respondents in denying the pension to the applicant under Rule 26 (1) of the of the CCS (Pension) Rules, 1972 cannot be said to be illegal.

Therefore, in my opinion, the applicant is not entitled for any relief in the present OA.

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22. Consequently, the OA being devoid of merit is dismissed with no order as to costs. MA for condonation of delay is also dismissed.

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Member (A)

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