

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00459/2014

Date of Decision : 7.4.2015
Reserved on: 25.03.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Balbir Singh son of Sh. Hazara Singh, presently residing at 86, Stanley Road, IG1 IRQ, Ilford, London (U.K), through Special Power of Attorney Smt. Pritam Kaur w/o Sh. Balbir Singh, resident of House No. 123, Village Khuda Jassu, UT Chandigarh.

Applicant

Versus

1. Union of India through Secretary, Ministry of Health, North Block, New Delhi – 110 001.
2. Director, Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh.
3. Senior Administrative Officer (Vig.), Post Graduate Institute of Medical Education and Research, Sector 12, Chandigarh.

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Respondents

Present: Mr. J.R. Syal, counsel for the applicant
None for the respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"(i) To quash the impugned order bearing No. Estt. Security/PGI/2014/365, dated 05.03.2014 (Annexure A-13),

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whereby the representation of the applicant dated 28.11.2013 was rejected, conveying that pension could not be granted under the provisions of Rule 49(2)(b) of the Central Civil Services (Pension) Rules, 1972.

(ii) That after quashing the order dated 5.3.2014 (Annexure A-13), the respondents may be directed to consider the request of the applicant for the grant of pension and pensionary benefits in accordance with the provisions of the Fundamental Rule 56(K)(1) read with Rule 49(2)(b) of the Central Civil Services (Pension) Rules, 1972, which provides for proportionate pension to the employee who retired before completing qualifying service of 33 years, provided he has put in more than 10 years of service, as the applicant has already completed 17 years 10 months and 16 days of service with the respondents."

2. The background of the matter is that the applicant was appointed as Security Guard Grade-II in the PGIMER on 31.12.1988. He was granted ex-India leave for a period of 138 days w.e.f. 31.8.2006 to 15.1.2007 vide order dated 22.9.2006 (Annexure A-2). The extension of leave applied for w.e.f. 17.1.2007 to 24.5.2007 was declined vide memo dated 25.4.2007 (Annexure A-3). The applicant then served a notice of voluntary retirement on 21.6.2007 (Annexure A-4) and the same was accepted with immediate effect treating the period from 16.1.2007 to 3.8.2007 as dies-non vide order bearing endorsement No. Security/PGI/2007/788-98 dated 8.8.2007. The applicant had been pursuing the matter regarding release of retiral benefits but pension had not been released to him. He also served Legal Notice dated 3.3.2009 in this regard (Annexure A-6), but he did not get any relief. M _____

3. It has further been stated that as per Rule FR 56(k)(1), a Government servant by giving notice of not less than three months in writing to the appropriate authority, can retire from service after he attained the age of 55 years. The applicant fulfilled this condition and hence, was retired vide order dated 3/8.8.2007. By virtue of his retirement, the applicant was entitled to pension as per CCS Pension Rules, 1968 and was also entitled to release of gratuity. The applicant filed OA No. 273/CH/2009 which was disposed of vide order dated 2.2.2010 (Annexure A-7) with some directions to the applicant as well as the respondents regarding completion and processing of pension papers.

4. It has been stated in the rejoinder that after much further litigation the applicant filed Review Application No. 252 of 2012 in CWP No. 13239 of 2011 in the Jurisdictional Punjab and Haryana High Court at Chandigarh. Vide judgement dated 25.10.2013 while recording the statement of the counsel for the petitioner to the effect that claim for pension can be considered under Rule 49(2)(b) of the Central Civil Service Pension Rules, 1972, which provides for proportionate pension to the employee who retired before completing qualifying service of 33 years provided he has put in more than ten years of service, Hon'ble High Court permitted the applicant/petitioner to make representation in this regard to the competent authority and the competent authority was given direction to decide the representation in accordance with law expeditiously. Since the claim of the applicant for pension had again

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been rejected by the respondent PGIMER vide order dated 5.3.2014 (Annexure A-13), hence this OA. 18

5. In the written statement filed on behalf of the respondents, it has been stated that the applicant Balbir Singh was not found eligible for pension by the answering respondents, interalia, also on the ground that he did not complete 20 years of qualifying service, as required by Rule 48-A and Rule 48-A(3A)(b), under which he was voluntarily retired. This fact is also not disputed by the applicant as he had completed only 17 years 10 months and 16 days of service. The controversy had been decided by the Jurisdictional High Court while disposing of the CWP No. 13239 of 2011 vide its order dated 13.2.2012 (Annexure R-1) recorded that the applicant has been rightly denied the benefit of pension. This was reaffirmed by the Jurisdictional High Court vide its order dated 25.10.2013 (Annexure R-2) disposing of the Review Petition No. 252 of 2012 in CWP No. 13239 of 2011, while holding, that there is no illegality in the order dated 13.2.2012, because it remained undisputed that the applicant retired on completion of only 17 years, 10 months and 16 days of service and was retired under Rule 48-A, which required 20 years of qualifying service. The applicant was only granted a liberty by the Jurisdictional High Court to make a representation to the answering respondents while disposing of the RA No. 252 in CWP No. 13239 of 2011, vide order dated 25.10.2013 (Annexure R-2) if his case for pension would be considered under Rule 49(2)(b). Consequently, the applicant

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Balbir Singh made a representation dated 28.11.2013 which was duly considered and he was not found eligible for pension even as per Rule 49(2)(b), as the said rule applies to those employees who retire on superannuation at the age of 60 years whereas, in the present case, the applicant had sought voluntary retirement under Rule 48-A of the CCS Pension Rules, 1972 for which 20 years of qualifying service is essential.

6. It has also been stated that the gratuity amount of Rs. 86,913/- and leave encashment amount of Rs. 26,554/- were paid vide cheque No. 895648 dated 14.9.2010.

7. Arguments advanced by the learned counsel for the applicant have been heard when learned counsel pressed that the applicant had applied for retirement under the Fundamental Rules. As per Fundamental Rule 56(k)(1), the applicant having completed 55 years of age was entitled to take retirement and was thereafter entitled to pension as per Rule 49(2)(b) that reads as follows:-

“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.”

Since the applicant had completed more than seventeen years of service from the date of his initial appointment to the date when his request for retirement was accepted after deducting the period treated as dies-non, the applicant was entitled to proportionate pension. u

8. Since none was present to represent the respondents in spite of order dated 18.3.2015 making it clear that even if either of the parties was not present on the next date of hearing, the matter would be decided invoking Rules 15/16 of CAT Procedure Rules, 1987, Rule 16 of the CAT Procedure Rules, 1987 was invoked and we proceeded to decide the matter. However, when decision was reserved, it was also recorded that two days' time was being allowed to the learned counsel for the parties to submit their written arguments, if any. The same have been submitted by the counsel for the applicant as well as counsel for the respondents and these have been taken into account.

9. From the material on record, it is clear that the applicant submitted his notice regarding voluntary retirement which was received by the PGI on 27.6.2007. It was specifically mentioned that retirement was sought under the Fundamental Rules. Hence, it is not understood why the respondent Institute is pressing again and again that voluntary retirement was sought and allowed to the applicant under Rule 48-A of the CCS Pension Rules, 1972 under which 20 years of qualifying service is essential. If the 20 year criteria was to be applied, request for retirement under Rule 48-A could not have been allowed by the PGIMER.

10. As per the Fundamental Rule 56(k)(1), the applicant having completed 55 years of age, was entitled to seek retirement and was also thereafter entitled to pension as per Rule 49(2)(b) reproduced above. Hence, the OA is allowed with directions to the respondents to process

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the matter keeping in view the retirement of the applicant under Fundamental Rule 56(k)(1) and release the pro-rata pension admissible to him keeping in view his service of 17 years, 10 months and 16 days. Action in this regard may be completed within two months of a certified copy of this order being served upon the respondents. No costs.

As
(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

B. A. Agarwal
(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 7.4.2015.

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