

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1698/2014

Order reserved on 16th November 2016

Order pronounced on 19th November 2016

Hon'ble Mr. K.N. Shrivastava, Member (A)

Pratima Mittra (DR)
w/o Sajoy Kumar Mittra
r/o C-8/8766, Vasant Kunj
New Delhi – 70

..Applicant

(Mrs. Harvinder Oberoi, Advocate)

Versus

Union of India through

1. Secretary
Ministry of Health & Family Welfare
Govt. of India
Nirman Bhavan, New Delhi – 11
2. Director
National Institute of Health & Family Welfare
Baba Gangnath Marg, Munirka
New Delhi – 67
3. Central Pension Accounting Office
Department of Expenditure
Ministry of Finance
Govt. of India
Trikoote II, Bhikaji Cama Place
New Delhi – 66
4. Director
National Institute of Public
Cooperation and Child Development
5 Siri Institutional Area
Hauz Khas, New Delhi – 16

..Respondents

(Mr. H.D. Sharma, Advocate for respondent Nos. 2 & 4 –
Dr. Ch. Shamshuddin Khan, Advocate for respondent Nos. 1 & 2)

O R D E R

The applicant has filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following specific relief:

“B. To direct the respondents to grant prorata pension to the applicant counting services from 11 January 1977 to 12 August 2002 and pensionary benefits may be ordered to be calculated and paid accordingly.

C. Direct the respondents to pay interest on the delayed payment of retiral dues @ 12% per annum.”

2. The brief facts of the case are as under:

2.1 The applicant joined the National Institute of Health Administration & Education (NIHAE) on 11.01.1977 as Research Assistant. NIHAE later got merged with National Institute of Family Planning (NIFP) and a new organization was created called as National Institute of Health & Family Welfare (NIHFW), an autonomous body under the Ministry of Health & Family Welfare.

2.2 On 20.09.1982, the applicant was promoted to the post of Training Officer in which she continued till 02.05.1989. In between from 01.11.1985 to 31.10.1986, she worked as Research Officer on deputation for a DANIDA funded project implemented by the NIHFW. She was thereafter promoted as Lecturer (Medical Care & Hospital Administration) in NIHFW on 03.05.1989.

2.3 While working in NIHFW, the applicant applied for the post of Deputy Director (Management) in the National Institute of Public Cooperation & Child Development (NIPCCD) – respondent No.4. Her application was forwarded to NIPCCD through proper channel. She secured appointment in NIPCCD as Deputy Director (Management) and joined the

said post on 31.05.1989, without any break in service. The NIPCCD is a society registered under the Societies Act, 1869. It functions under the aegis of the Ministry of Women and Child Development.

2.4 The applicant requested NIPCCD to count her past service rendered in NIHFW from 11.01.1977 to 30.05.1989 for pensionary benefits. The NIPCCD vide Annexure A-3 letter dated 07.11.1991 wrote to NIHFW to intimate the terminal benefits, if any, paid to her and also to bear the pensionary and gratuity liability in respect of the services rendered by her in NIHFW, but there was no response from NIHFW.

2.5 The applicant rejoined the NIHFW as Reader (Management) on a time bound project “India Population Project VI” pursuant to her appointment order dated 01.09.1992 (Annexure A-4 (colly.)). She continued in the said post till 31.03.1997 and later was absorbed as Reader (Nursing Administration) in the Department of Community Health Administration at NIHFW (Annexure A-5). She was also asked to concurrently look after the charge of Reader (Nursing Administration) (Annexure A-6).

2.6 On her selection as Regional Medical & Technical Officer for South Asian countries in International Planned Parenthood Federation (IPPF), she resigned from NIHFW on 12.08.2002.

3. The applicant’s claim is that she is entitled for the grant of pension under the CCS (Pension) Rules, 1972 (for short “Pension Rules”) for having served in NIHFW and NIPCCD continuously from 11.01.1977 to

12.08.2002, i.e., about 25 years. As her request for grant of pension has not been considered, the applicant has filed the instant O.A.

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed her rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 16.11.2016. Arguments of Mrs. Harvinder, learned counsel for applicant, Mr. H.D. Sharma, learned counsel for respondent Nos. 2 & 4 and Dr. Ch. Shamsuddin Khan, learned counsel for respondent Nos. 1 & 3 were heard.

5. Learned counsel for applicant, besides narrating the factual matrix of the case, stated that the respondents are misapplying the provisions of Rule 26 (2) of the Pension Rules. She stated that the applicant has served NIHFW and NIPCCD continuously for 25 years and without any break. She stated that the applicant's lien in NIHFW was continued during the period she worked in NIPCCD. The learned counsel placed reliance on various judgments detailed as under:

- (i) The order of this Tribunal in O.A. No.1080/2012 dated 25.04.2014 (**Brij Mohan v. Delhi Subordinate Service Selection Board & others**) wherein the applicant had initially worked in Kendriya Vidyalaya Sangathan (KVS) as a teacher and later joined as a teacher in Municipal Corporation in Delhi (MCD). The Tribunal had directed that his services rendered in KVS should be counted for continuity in service and all consequential benefits arising thereof, including the pensionary benefits, and KVS was directed to transfer the service

book, GPF account and leave account of the applicant therein to the MCD.

- (ii) The order of the Tribunal dated 13.11.2006 (**K.L. Juneja s/o Lakhmi Chand v. Union of India & others**). The applicant therein had worked with the Central Water Commission (CWC), Government of India from 04.10.1965 to 30.09.1978 prior to absorption in National Thermal Power Corporation (NTPC). The Tribunal directed the respondents therein to release pro rata pension and other pensionary benefits as per rules to the applicant for the period of his service in the CWC.
- (iii) The Tribunal's order in O.A. No.84/HR/1994 dated 17.07.1996 (**Jasbir Singh Narula v. Union of India & others**). The applicant therein was recruited as Superintendent in Military Engineering Service (MES) and later joined an undertaking of the State Government of Punjab. It was held thus:-

“The reason given for denying the retirement benefits to the applicant that he forfeits his entire service under the Central Government thus cannot be accepted. As per Rule 26 and 37 above said, the applicant is deemed to have retired with effect from the date of absorption in the Punjab Chemi Plants Ltd and this legal fact under the statute which has come into existence entitling him to retired benefits cannot be wiped away by his any subsequent act of leaving the subsequent job. His entitlement came into existence with effect from 18-1-1980, the date of his absorption and the entitlement to the benefit under Pension Rules may include pension, service gratuity, DCRG, leave encashment and other benefits in case he had retired in due time from his subsequent post under the Public Sector Undertaking. There is no question of granting him or his asking for pro rata pension as he did not retire from his subsequent post. But all the same it cannot be said that he can be denied even the benefits to which he had become eligible on his deemed retirement with effect from 15-1-1980.”

(iv) The judgment of Hon'ble Apex Court in the case of **K.S.R.T.C. v.**

K.O. Varghese, AIR 2003 SC 3966 wherein it was held thus:-

“18. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the foil of life when physical and mental powers start ebbing corresponding to aging progress and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to an employee is earned by rendering long and sufficient service and, therefore, can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison de'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and pecuniary if there is nothing to fall back upon.

19. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them obscure.”

Concluding her arguments, the learned counsel submitted that the applicant has put in the qualifying service in Government entities, and as such she is entitled for pensionary benefits under the Pension Rules. Hence the prayers made in the O.A. may be allowed.

6. *Per contra*, Mr. H.D. Sharma, learned counsel for respondent Nos. 2 & 4 stated that the applicant had resigned from the services of NIHFW on 30.05.1989 for taking up her new appointment as Deputy Director (Management) in NIPCCD. Like-wise, she resigned from NIPCCD for joining NIHFW as Reader (Management) on India Population Project VI

and that she resigned on 12.08.2002 for taking up her foreign assignment as Regional Medical & Technical Officer for South Asian countries in International Planned Parenthood Federation (IPPF). It was also submitted that the applicant while working in NIHFW had also worked as Research Officer on deputation for a DANIDA funded project implemented by the NIHFW between 1985 to October 1986. The learned counsel vehemently argued that the applicant did not work continuously for 20 years in any of the organizations, viz. NIHFW & NIPCCD, and as such she is not entitled for the pensionary benefits. He stressed that the applicant had tendered her resignation from one organization before joining her other organization every time, and as such in terms of Rule 26 (2) of the Pension Rules, she is not entitled for the grant of pension as the past service gets forfeited in the event of tendering resignation. The learned counsel placed reliance on the judgment of Hon'ble Apex Court in **Union of India & another v. Satish Kumar**, II (2006) SLT 390 wherein it has been held as under:-

“12. So long as it is an admitted position that Rule 49 governs, payment of pension in all these cases, could only be as per the Rules. When there is no challenge to the Rule and there is no ground of discrimination taken in any of the petitions the Rule cannot be by-passed.”

7. The learned also relied on the order of this Tribunal in the case of **B.B. Trivedi (Dead) v. Secretary, Ministry of Agriculture & others** (T.A. No.236/2009) decided on 22.09.2016. In the said case, the applicant had worked in an entity of State Government of Uttar Pradesh and later joined National Council for Cooperative Training (NCCT) of the Central Government. The Tribunal had declined the prayer of the applicant for

counting his service rendered in the entity of the State Government for his pensionary benefits.

Concluding his arguments, the learned counsel submitted that the applicant has not rendered the qualifying years of service and in view of the explicit provisions of Rule 26 (2) of the Pension Rules, she is not entitled for the pensionary benefits, and as such her prayers in the O.A. deserve to be rejected.

8. Dr. Ch. Shamsuddin Khan, learned counsel for respondent Nos. 1 & 3 adopted the arguments put-forth by the learned counsel appearing for respondent Nos. 2 & 4.

9. I have considered the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Admittedly, the applicant has served in NIHFW in two stints, first from 11.01.1977 to 30.05.1989 and second from 01.09.1992 to 11.08.2002. She also served in NIPCCD from 31.05.1989 to 12.08.2002. For a brief period, she also worked as a Research Officer on deputation for a DANIDA funded project from 01.11.1985 to 31.10.1986. This period of service is to be construed as service in NIHFW only. Both NIHFW and NIPCCD are autonomous bodies under the Ministry of Health & Family Welfare and Ministry of Women & Child Development respectively. It is also an admitted fact that the applicant has served under these two autonomous bodies of the Central Government from 11.01.1977 to 12.08.2002 without any break in service. It is also an admitted fact that the applicant's application was forwarded by NIHFW to NIPCCD for the post of Deputy Director (Management). The applicant's claim that her lien with NIHFW

had continued while she was working in NIPCCD, has not been explicitly denied by the respondents. Rules 13 & 14 of the Pension Rules deal with the issue of qualifying service. As per these Rules, if a government servant after having served the State Government joins the Central Government, then the service rendered by him/her in the State Government is to be reckoned for the purpose of pensionary benefits. The State Government is, however, required to share the burden of pensionary benefits on pro rata basis. In the clarification issued by the Ministry of Finance, Government of India vide O.M. No.F.2 (117)/76/SC dated 26.12.1977, it is clarified that if a government servant in Central Government joins another department, then the pension liabilities are not allocated between the departments of the Central Government. In the instant case, the applicant has served NIHFW from 11.01.1977 to 30.05.1989 and from 19.08.1992 to 11.08.2002, and NIPCCD from 31.05.1989 to 18.08.1992. These organizations are autonomous bodies under two separate Ministries of the Central Government and in both these organizations, the Pension Rules are applicable.

10. The claim of the applicant that while she was in the service of NIPCCD, her lien with NIHFW has continued has not been effectively repelled or rebutted by the respondents. Pensionary benefits are such benefits, which accrue to an employee after he/she having served the organization for a long period of service. The qualifying service has also been prescribed for grant of the pensionary benefits. Under the Pension Rules, the qualifying service is 20 years. There is no denial to the fact that the applicant has served the NIHFW for more than years. Considering the fact that when the applicant was serving in NIPCCD, her lien had continued

in NIHFW, it can safely be assumed that she has rendered virtually continuous service in NIHFW till she resigned on 12.08.2012 to take up her foreign assignment. The ratio of the judgment of the Apex Court in **Satish Kumar's** case (supra) is not applicable to this case. Like-wise, the principles laid down by the Tribunal in **B.B. Trivedi's** case (supra) are also not applicable to the instant case, as the facts of that case are completely different from the facts of the instant case.

11. I do take into consideration that NIHFW and NIPCCD are two separate autonomous bodies working under two different Ministries. The Pension Rules do not specifically provide for sharing the burden of the pensionary benefits of an employee on pro rata basis by the autonomous bodies, in which an employee had worked. However, in the present case, even if the services rendered by the applicant in NIPCCD are ignored for the purpose of pension, yet she qualifies for the pension in NIHFW wherein she has served for more than 20 years.

12. In this view of the matter, I am of the view that the applicant is entitled for pensionary benefits from NIHFW – respondent No.2 for having served in the said organization for over 20 years.

13. Accordingly, I dispose of the O.A. with the following directions:-

- i) The respondent No.2 – NIHFW, shall grant pensionary benefits to the applicant under the Pension Rules taking into consideration the service rendered by her in it. It is also clarified that the applicant shall not be entitled for any arrears and that the sanction of the pension shall be with prospective effect.

- ii) The respondent No.2 shall implement the directions contained in (i) above within a period of three months from the date of receipt of a copy of this order.

No order as to costs.

(K.N. Shrivastava)
Member (A)

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