Central Administrative Tribunal
Principal Bench, New Delhi

OA No. 622/2013

Reserved on:11.09.2018
Pronounced on:17.10.2018

Hon'ble Ms. Praveen Mahajan, Member (A)

Jai Karan
S/o Late Shri Pahalad
R/o H.No.B-12, Village Bhati Kalan
Chatterpur, New Delhi ... Applicant

(By Advocate: Shri Pradeep Dahiya)

VERSUS

1. Delhi Jal Board
   Through the Director
   Varunalaya Bhawan Phase-II
   Jhandewalan Extension Karol Bagh
   New Delhi – 110 005.

2. The Account Officer (PN) S
   Delhi Jal Board
   Varunalaya Bhawan Phase-II
   Karol Bagh, New Delhi.

3. Department of Personnel and Training
   Through the Secretary
   Ministry of Personnel, Public Grievances and Pensions
   North Block, New Delhi. ...Respondents

(By Advocate: Shri U. Srivastava, Ms. Neelima Rathore
Shri Karan Sinha and Ms. Saksh Popli)

O R D E R

The applicant in the OA was appointed as an Assistant Pump Driver (APD) in DDA in 1972 and was declared permanent on 01.03.1974. Thereafter the applicant was transferred to Delhi

Jal Board (then under the Municipal Corporation Department) on 13.01.1996. The applicant continued to work as a regular employee of the respondent department till 31.12.2005 (the date of his superannuation). The applicant states that he was made incomplete payment via cheques dated 27.12.2005 and 01.01.2006 amounting to Rs.4,01,116/- and Rs.92,058/- respectively in regard to dues of Pension and Gratuity fund by the respondents. The applicant kept on urging the respondents to clarify as to why the payment has not be made in totality. On 04.11.2011, the applicant made a representation to the CEO, Delhi Jal Board requesting him to expeditiously clear all the pending dues in accordance with the current period of qualifying services.

2. The applicant came to know that the respondents have wrongly calculated his net qualifying period of service at 21.5 years following the circular dated 22.02.2008 issued by the Delhi Jal Board (Annexure-A/6), He avers that pensionary benefits in his case should have been calculated as per Rule 35 A and other relevant provisions of the Pension Rules, and, the respondents should have calculated his net qualifying service years from 01.03.1974 to 31.12.2005 (date of retirement) which comes to a total of 32 years of regular service.

3. On 25.11.2011, the respondents issued the impugned letter to the applicant with regard to calculation of his service period in accordance with Circular No.DJB/AC(G)-I/DDA/(ACP)/08/20374 dated 22.02.2008 mentioning that the net qualifying period of service rendered on work charge from 01.03.1974-09.01.1991 was at 50%. Subsequently till 31.12.2005 it has been considered in full excluding the non-qualifying service of two years, hence his total net qualifying period of service was considered to be 21.5 years. On 17.12.2011, the applicant made an RTI application requesting the Department to supply a copy of the rules and regulations governing the calculation of the Gratuity, G.P.Fund and Pension of the retired employees, he followed it by another RTI application through his counsel on 27.08.2012. Ultimately, on 12.12.2012, the respondents supplied the copy of the circular to the counsel of the applicant.

4. The applicant has also challenged the Govt. of India Decisions No.G.I., M.F., O.M. No.F.12(a)-E. V/68, dated the 14th May, 1968 and G.I. Dept. of Per. & Trg., O.M. No.12011/1/85-Estt.(C), dated the 10th March 1986 denying the applicant the benefit of service on work-charge basis for determining the qualifying service towards pension in full and only to the extent of

50% as being ultra vires and violative of Article 14 of the Constitution of India.

5. Aggrieved the applicant filed the present OA seeking the following reliefs :-

> "(a) Allow the Original Application;
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> (b) Compute Gratuity and other pensionary benefits by taking the net qualifying years as 32 years (64 six monthly period);
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> (c) Pass such other sand further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case in the interest of Justice.
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> (d) Quash and set aside Govt. of India Decisions No. G.I., M.F., O.M. No.F.12(a)-E. V/68, dated the 14th May, 1968 and G.I. Dept. of Per. & Trg., O.M. No.12011/1/85-Estt.(C), dated the 10th March 1986 denying the applicant the benefit of service on work-charge basis for determining the qualifying service towards pension in full and only to the extent of 50% being ultra vires and violative of Article 14 of the Constitution of India"

6. The respondents in their counter affidavit submit that the applicant has challenged the validity of GOI Decision No.GI, M.F. OM No.F.12(1)-E, V/68 dated 14th May 1968 and GI Dept. of Per & Trg OM No.12011/1/85-Estt.(C) dated 10th March 1986 broadly on the ground that fixation of 50% of length of service rendered as daily wager or work charge employee is arbitrary and hence unconstitutional. The respondents contend that virus of law or rule or an executive action can only be tested by a court on limited grounds, namely that (i) Executive or legislators had no

power to legislate or issue subordinate legislation or had no competence to issue executive order; (ii) the action is irrational; and (iii) there is non observance of principles of natural justice.[(1984) 3 All ER 935]. None of these is applicable in the present case. It is contended that the Hon'ble Supreme Court has followed the afore-referred judgment rendered by the English court and laid down the law relating to permissibility of judicial review, stating that while testing the correctness of law, a court cannot sit in appeal to see the correctness of law but can only review it judicially, the role being limited to correcting the errors of law. [(2013) 5 SCC 252], [(1992) Suppl. 2 SCC 312].

7. The respondents submit that the Hon'ble Apex Court has also laid down that an executive action fixing threshold limit cannot be struck down on the grounds of arbitrariness or irrationally [(1976) 3 SCC 428]. Relying upon the aforementioned citations, the respondents aver that Courts/Tribunal cannot intervene in such cases.

8. I have gone through the facts of the case carefully and find substantial force in the averments made by the respondents. Before I adjudicate the claim of the applicant, it is essential to examine the circulars which the applicant finds offensive.

8.1 As per Govt. of India Decisions No.G.I., M.F., O.M. No.F.12(1)-E. V/68, dated 14th May, 1968 states as under :-

"Counting half of the service paid from contingencies with regular service–under article 368 of the CSR's (Rule 14), periods of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingences are employed in types of work requiring services of whole time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so, to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions, viz :-

(a) Service paid from contingencies should have been in a job involving whole time employment (and not part time for a portion of the day).

(b) Service paid from contingences should be in a type of work or job for which regular posts could have been sanctioned, e.g., malis, chowkidars, khalasis, etc.

(c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly or daily rates computed and paid on a monthly basis and which thought not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.

(d) The service paid from contingencies should have been continuous and followed by absorption in regular employment within a break.

(e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available."

8.2 Similarly, vide OM No.12011/1/85-Estt. (C) dated 10th March, 1986 it has been held that half the service paid from contingencies will be allowed to be counted for the purpose of terminal gratuity as admissible under the CCS (TS) Rules, 1965, where the staff paid from contingencies is subsequently appointed on regular basis. The benefit will be subject to the conditions laid down in OM dated the 14th May, 1968, above.

9. The applicant in the OA is aggrieved by the fact that only 50% of length of service rendered by him as daily wager or work charged employee has been counted by the respondents for the sake of grant of pension. The OMs dated 14.05.1968 and 10.03.1986 have discussed this situation extensively. That there can be no intervention in respect of such executive directions has clearly been brought out by the respondents in their counter affidavit.

10. On perusing the aforementioned circulars, I am unable to find any error in the directions/guidelines contained therein. In any case these guidelines would apply to all such similarly situated employees and cannot be considered arbitrary or violative of Article 14 of the Constitution of India, as alleged in the OA.

11. There has been no procedural impropriety or violation of any rules while issuing the impugned OMs. Thus the rationale of taking 50% of length of service of the applicant, when he was on work charge, for calculating qualifying service and pension, has been correctly made applicable by the respondents. The OA, in my view lacks merit and is dismissed. No costs.

(Praveen Mahajan)
Member (A)

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