

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 20/360/2017

Date of CAV: 07.01.2019

Date of Pronouncement: 08.01.2019

Between:

Sri K. Prabhakar, S/o. late K. Venkateswarlu,
Aged about 61 years, Occ: Retired from service,
R/o. Flat No. 301, Swathysai Pancy Apartments,
Sitaram Township, Nallapadu Road,
Guntur, Andhra Pradesh.

... Applicant

And

1. The Regional Provident Fund Commissioner,
Employees Provident Fund organization (EPFO),
3rd Lane, Krishna Nagar, Guntur – 522 006,
Andhra Pradesh State.
2. The Additional Central Provident Fund Commissioner,
Employees Provident Fund organization (EPFO),
Zonal Office, Barkatpura, Hyderabad.
3. The Central Provident Fund Commissioner,
Employees Provident Fund Organization (EPFO),
Bhavishya Nidhi Bhawan, 14, Bikhaji Cama Place, New Delhi.
4. Union of India, Rep. by the Secretary,
Ministry of Labour and Employment,
Rafi Marg, New Delhi.

... Respondents

Counsel for the Applicant ... Mr. P. Venkatesh

Counsel for the Respondents ... Mr.B.N. Sharma, SC for EPFO

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The applicant is contesting the reduction of his pension and gratuity by the respondents vide their letters dated 19.08.2016 and 08.02.2017.

3. The case emerges from the facts that the applicant joined as LDC in the Ministry of Information and Broadcasting on 18.03.1982. After serving for 15 years, he submitted technical resignation on 01.10.1997 and joined the respondent organization on 03.10.1997 which comes under the jurisdiction of Ministry of Labour and Employment. Thereafter, the applicant retired on 30.06.2016. Years of service rendered by the applicant in the Ministry of Information & Broadcasting is little over 15 years and in the Employees Provident Fund Organization (for brevity "EPFO") is for a period of 18 years, 8 months and 29 days. The applicant received prorata pension from the Ministry of Information & Broadcasting as per PPO dated 13.05.2003. When the applicant retired from EPFO, his pension and gratuity were reduced by the respondents by taking into account the prorata pension and gratuity drawn by him from the Ministry of Information & Broadcasting. Aggrieved over the same, the OA has been filed.

4. The contentions of the applicant are that Rules 7(1) and 18(3) of CCS (Pension) Rules, 1972 (for brevity "Pension Rules") don't apply to him. His pay has to be mandatorily protected by the EPFO on technically resigning from the Ministry of Information & Broadcasting. The applicant applied for pro-rata pension from the respondent organization. The invocation of Rule 18(3) of Pension Rules to reduce his pension is irregular and violation of Articles 14, 16 & 21 of the Constitution of India. The applicant did represent to the respondents on 03.05.2016, 14.07.2016 and 24.10.2016 for which he got unsatisfactory replies.

5. The respondents intimate that the applicant was granted retirement benefits on superannuation as per Pension Rules on par with the staff of EPFO. As per the respondents, a Government servant cannot draw two pensions as per

Rule 7(1) of Pension Rules. The applicant's past service in Ministry of Information & Broadcasting was considered and the applicant was granted financial upgradations as well as promotions. The service of the applicant in the EPFO was thus treated as continuous to the service rendered in the Ministry of Information & Broadcasting. The action of the respondents is as per rules. The respondents also claim that their action is as per Rule 49(2) and Rule 50(1)(a) of Pension Rules. Both the Ministry of Information & Broadcasting and the Ministry of Labour being Government of India organizations, the same Pension Rules apply.

6. Heard learned counsel and perused the documents on record.

7. The applicant has claimed that he has submitted technical resignation from the Ministry of Information & Broadcasting and he has applied for pro-rata pension for the past service in the Ministry of Information & Broadcasting. As per the Department of Pension & Pensioners' Welfare OM dt. 25.08.1994, an employee who desires that his past service should be counted as qualifying service for pension under the new organization, then, in such a case, the employee has to refund the terminal benefits with interest rate applied to GPF. In the present case, the applicant, as seen from the records, has not done so. However, the respondents have considered his past service and allowed terminal benefits to the applicant. The respondents should have verified properly before taking such an action. The applicant had an option to retain the benefits of the past organization and if he did so, his past service will not qualify for the pension in the new organization. The second option was to have the past service counted, but for that, he has to refund the benefits received from the earlier organization. Without taking such an option from the applicant, the respondents

have treated his past service as continuous service and extended benefits like promotion, financial upgradation, etc. Therefore, the applicant has gained benefit by allowing the respondents to treat his past service. Having done so, the applicant would obviously be coming under the ambit of Pension Rules which deal with regulating his pension, reckoning his past service. Therefore, at this juncture of time, seeking separate pension for the service rendered in EPFO would be unreasonable. The action of the respondents as per Rule 49(2) and Rule 50(1)(a) of Pension Rules is appropriate. The respondents have erred in not seeking refund of the terminal benefits taken by the applicant from EPFO before counting the past service for pensionary benefits. Had they done it, the issue would not have cropped up. However, since they have already counted it and calculated the pension, the issue is more or less a *fait accompli*. The applicant's case seeking for a separate pension for services rendered in EPFO does not stand to logic since he availed all the benefits like promotion, financial upgradations, etc. that could accrue to him by counting his past service in the previous organization. The applicant having, thus, gained benefits stated, in the new organization and thereafter, asking for pension to be given based exclusively on the service rendered in the EPFO is illogical. In a way, the applicant is lucky that the respondents have not directed him to refund terminal benefits with interest. Thus, based on the aforesaid, we find no ground to intervene on behalf of the applicant. Thus, there being no merit in the OA, it is accordingly dismissed. There shall be no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 8th day of January, 2019

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