

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. O.A. 350/01356/2014

Date of order: 1.4.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

HARADHAN PATTANAYAK

VS.

UNION OF INDIA & ORS. (Posts)

For the Applicant : None

For the Respondents : Ms. M. Bhattacharyya, Counsel

O R D E R (Oral)

Justice Shri Vishnu Chandra Gupta, Judicial Member:

Heard Ld. Counsel for the respondents as none appears for the applicant.

2. By means of this application under Section 19 of the AT Act, 1985 the applicant has sought for the following reliefs:-

- "a) An order do issue declaring Rule 49 of the Central Civil Services (Pension) Rules, 1972 is ultra vires to the Article 14 and 16 of the Constitution of India in a given case where an Extra Departmental Delivery Agent (EDDA) who rendered more than 28 years service in the Postal Department, Government of India prior to absorption and/or appointment in the regular establishment as Group-D employee forthwith.
- b) An order do issue directing the respondents to reckon the shortage of nine months service from the past service of your applicant forthwith;
- c) An order do issue directing the respondents to grant pension to the applicant forthwith;
- d) An order do issue directing the respondents to grant same benefit as granted to similarly circumstanced retired Group-D employee name M.R. Palaniswami forthwith;
- e) An order do issue directing the respondents to release the arrear pension together with @ 18% simple interest forthwith;"

3. The admitted fact of the case are that the applicant was appointed as Extra Departmental Delivery Agent in short EDDA on 28.3.1973 and was posted at Sunuri Post Office under the disposal of Superintendent of Post Offices, Purulia

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Division. He continues on such post and was taken into Gr. 'D' post after recommendation of Departmental Promotion Committee on a meeting held on 1.5.2001 and a letter of appointment was issued and in pursuance thereof on 8.5.2001. The applicant joined the post of Gr. 'D'. He retired from service on 31.7.2010 after attaining the age of superannuation. He asked for grant of pension but the same was declined on the ground that 10 year qualifying service has not been rendered by the applicant before retirement.

4. Aggrieved by this action the applicant preferred the original application before this Tribunal having O.A. No. 2285 of 2010 which was disposed of along with O.A. No. 140 of 2011. The relief claimed in O.A. No. 2285 of 2010 is for a direction with the respondents to reckon a portion of service rendered by the applicant as EDDA as qualifying service to enable him for minimum pension. The relief was declined by this Tribunal vide order dated 1.7.2011.

5. Aggrieved by the same the applicant preferred a Writ Petition having WPCT No. 42 of 2012. The same was also dismissed on 16.2.2012. The same is reproduced hereinbelow for ready reference:-

" This is an application under Article 226 of the Constitution of India against judgment and order dated July 1, 2011 passed by the Central Administrative Tribunal, Kolkata Bench in Original Application No. 2285 of 2010. The aforesaid application was heard analogously with Original Application No. 140 of 2011 and both the aforesaid original applications were disposed of by common judgment.

The applicant in the Original Application No. 2285 of 2010 is the writ petitioner in this Court. The writ petitioner was appointed in a Group 'D' post in the Department of Post, Government of India, on May 1, 2001. Prior to his appointment/absorption in the Group 'D' post, he was functioning as an Extra Department Delivery Agent in the postal department from March 28, 1973. He retired from service on attaining the age of superannuation with effect from July 31, 2010. Therefore, he had put in nine years two months and seven days service with the postal department. As he did not qualify for getting pension, he was not favoured with pension. Minimum qualifying period is ten years of service.

There is no provision for relaxation of rules. Therefore, the authorities and the tribunal were right in rejecting the prayer of the writ petitioner for sanctioning pension.

In the facts and circumstances of the case, particularly, as there is no

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provision for relaxation of the rules relaxing the qualifying period of his service, we hold that the tribunal did not commit any error of jurisdiction requiring interference by this Court.

The writ petition is, thus, dismissed.

We make no order as to costs."

6. Thereafter he moved a representation to the President of India on 16.6.2012 for grant of pension and thereafter he filed this petition.

7. Once the petitioner has failed to get the relief from this Tribunal he approached the Hon'ble High Court but his case also does not find support. The High Court categorically observed that he is not completed 10 years qualifying service and there is no provision to relax the rules. Hence the petitioner is not entitled for pension.

8. Now in the present petition the applicant moulded the relief very cleverly by challenging the vires of Rule 49 of CCS Pension Rules 1972 and after declaring the same as ultra vires asked to grant benefit of grant of pension. He also alleged in the relief clause that benefit of grant of pension was extended to one of the person named in the relief clause so he may also be given the benefit.

9. The petitioner approached the Hon'ble High Court under Article 226 of the Constitution of India. The High Court was fully competent to examine the vires of Rule 49 but before Hon'ble High Court the applicant did not chose to challenge the vires of Rule 49 of the CCS (Pension) Rules, 1972. Hence, now the petitioner before this Tribunal is precluded to challenge the vires of the aforesaid provision which has also been held to be valid in the judgment of the Apex Court rendered in C. Jacob v. Director of Geology and Mining and another 2008(2) SCC L&S 964. The Ld. Counsel also relied upon another judgment of Apex Court in Union of India & ors. v. The Registrar and ors. passed on 24.11.2015 in Civil Appeal No. 13675-13676 of 2015 wherein almost similar controversy was dealt with by the Hon'ble Apex Court and it was held that pension can be granted only in



accordance with rules and not otherwise. The benefit of circular issued by DOPT in year 1991 was not extended to part time casual employee as is in the present case.

10. So far as the benefit extended to one of the person namely M.R. Palaniswami, the necessary document has not been brought on record nor it has been shown anywhere under what circumstances the benefit was granted.

11. Hence, he could not get any advantage of the pleadings alone. Moreover, if the authority once passed a wrong order the benefit of such wrong order cannot be granted and parity cannot be claimed against such an illegal order. Consequently, the petition cannot claim such benefit. Hence we do not find any merit in petition and is accordingly dismissed. No costs.

(Jaya Das Gupta)
MEMBER(A)

(Vishnu Chandra Gupta)
MEMBER(J)

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