

Central Administrative Tribunal - Delhi
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Sh. Amar Singh vs G.N.C.T. Delhi on 10 April, 2013
Principal Bench

New Delhi

O.A.No.1619/2012

Order Reserved on: 27.02.2013

Order pronounced on 10.04.2013

Hon ble Shri V. Ajay Kumar, Member (J)

Sh. Amar Singh

Ex-Laboratory Technician

s/o Sh. Dalip Singh

r/o Brahma Kumaris Prajapita

Ishwariya Vishwavidalaya

WZ-178/1, Street No.1

Sadh Nagar, Palam

New Delhi 110 045. Applicant

(By Advocate: Sh. M. Hussain)

Versus

State of NCT of Delhi

Through Secretary

Health

G.N.C.T. Delhi Secretariat

I.P.Estate

New Delhi.

Medical Supdt.

Aruna Asaf Ali Govt. Hospital

5, Rajpur Road

Delhi 110 054.

G.N.C.T. Delhi

Through Chief Secretary, I.P.Estate

Delhi Secretariat

New Delhi. Respondents

(By Advocate: Ms. Alka Sharma)

O R D E R

The short point falls for consideration in this OA is that whether a Government servant is not entitled for pension, though after completion of the qualifying service of 10 years, if he resigns from the service.

2. The applicant after serving in the Army Medical Corps as Naik, had been retired on 24.03.1986. Thereafter, he joined in the service of the respondents as a Laboratory Technician against a vacancy reserved for Ex. Serviceman on 22.03.1988 in the pay scale of Rs.1200-2040. After rendering unblemished service for a period of 18 years 4 months and 9 days, he submitted his resignation from the service vide his letter dated 01.07.2006, by stating that he is intending to dedicate himself fully in the spiritual service of the Society. The competent authority accepted his resignation w.e.f. 31.07.2006.

3. The applicant's repeated requests for payment of pensionary benefits and service gratuity were denied by the respondents vide their letters dated 27.02.2007 and 25.10.2008, vide Annexures A6 and A7 respectively. The respondents in their letter dated 27.02.2007 rejected the request of the applicant by stating that he has not completed the required qualifying service of 20 years. Later, the respondents vide their letter dated 25.10.2008 rejected the request of the applicant by stating that the matter was referred to the Finance (Accounts), Department of Govt. of NCTD for clarification and that it was clarified that since the Government servant resigned from his post, he is not entitled to any retirement benefits, i.e., gratuity and pension under Rule 26 of CCS (Pension) Rules, 1972.

4. The learned counsel for the applicant submits that the object and purpose of framing the CCS (Pension) Rules, 1972 is to provide the pension and other benefits to the Government servants, in recognition of their past service.

5. The learned counsel for the applicant further submits that the Hon'ble Apex Court in a catena of cases held that pension is not a bounty, it is the part of the salary for the period of service already rendered by the Government servant. He further submits that the said Pension Rules provides for granting of compassionate allowance, even to a Government servant who was dismissed or removed from service for his misconduct. Even under Rule 49 of the said Rules, referred to above, a Government servant is entitled for pro-rata pension.

6. The learned counsel further submits that though the applicant in his letter dated 01.07.2006 mentioned that he is intending to resign from service, but in reality he was intended to sought for premature retirement/voluntary retirement and hence, he is entitled for granting of pension. As the applicant was suffering from a mental disorder, known as seizure disorder, for which he had been taking treatment from Military Hospital, Delhi, unintentionally, he mentioned as resignation instead of voluntary retirement. In this regard, the learned counsel also places reliance on the Judgement of the Hon'ble Apex Court in Sheelkumar Jain v. The New India Assurance Co. Ltd. & Others, AIR 2011 SC 2990.

7. Per contra, Mrs. Alka Sharma, the learned counsel for the respondents submits that the applicant resigned from service and hence, forfeited his past service and accordingly he is not entitled for granting of any pension. She further submits that the contention of the applicant that he submitted his resignation under the influence of mental disorder is an afterthought and cannot be accepted and that the wording of the resignation letter dated 01.07.2006 clearly indicates that the same was written by the applicant consciously and in full mental health.

8. Heard Sh. M. Hussain, learned counsel for the applicant and Ms. Alka Sharma, learned counsel for the respondents and have also perused the pleadings on record.

9. For proper adjudication of the matter, it is relevant to note certain provisions of CCS (Pension) Rules, 1972.

10. Rule 3 (q) of the said Rules defines the word 'qualifying service' as follows:

'Qualifying Service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules ;

11. Rule 24 of the said Rules, which provides for forfeiture of service on dismissal or removal reads as under:

"24. Forfeiture of service on dismissal or removal:

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service."

12. Rule 26 of the said Rules which provides for forfeiture of service on resignation is as under:

6. Forfeiture of service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. (3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him. (4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely :-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation ; (ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper ; (iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days ; (iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by

the Government or in or under a body controlled or financed by the Government. (6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service. 1[(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.]"

13. Pensions are of two kinds, viz. Ordinary and Extraordinary. While the Ordinary pension is regulated by the CCS (Pension) Rules, 1972, the Extraordinary pension is regulated by the CCS (Extraordinary Pension) Rules (Appendix 3 of CCS (Pension) Rules). Ordinary pension is further divided into various classes. The following are the different classes of pension which may be granted, as per admissibility, to a government servant on his retirement from service:

Superannuation pension (Rule 35 A): Superannuation pension shall be granted to a government servant who is retired on attaining the age of superannuation (i.e. 60 years).

Retiring pension (Rule 36) : A retiring pension shall be granted :

(a) to a government servant who retires, or is retired in advance of the age of superannuation retirement in accordance with the provisions of Rule 48 or 48-A of the pension rules or Rule 56 of the Fundamental Rules.

(b) to a government servant who on being declared surplus, opts for voluntary retirement in accordance with the provision of Rule 29 of these rules.

Pension on absorption in or under a Corporation, Company or Body (Rule 37): Retirement benefits shall be granted to a government servant who is permanently absorbed in a service or post in or under a corporation, company or body owned or controlled or financed by the government, provided the permanent absorption is permitted by the government.

Invalid pension (Rule 38): Invalid Pension shall be granted to a government servant after being declared by the competent medical authority to be permanently incapacitated for further service. A government servant who desires to retire on invalid pension should apply to his Head of Office who will direct the applicant to the appropriate Medical Authority for examination. A certificate of incapacity for service obtained by the government servant without the prior knowledge of the Head of Office is invalid (Note below Rule 38).

Compensation pension (Rule 39): Compensation Pension shall be granted to a government servant who is discharged from public service on account of abolition of his permanent post and when suitable appointment of equal rank cannot be found or offer of a lower post is not accepted by him.

Compulsory retirement pension (Rule 40): Compulsory retirement pension is granted to a government servant who is compulsorily retired from the government service as a measure of penalty by the competent authority. Such pension or gratuity or both will not be less than two third nor more than full compensation pension or gratuity or both admissible on the date of compulsory retirement.

Compassionate allowance (Rule 41): A government servant who is dismissed or removed from service shall forfeit his pension and gratuity. The authority competent to dismiss or remove him from service may, if the case is deserving of special consideration sanction a Compassionate allowance not exceeding, two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

The quantum of pension/gratuity depends upon length of Qualifying Service, Average Emoluments and Emoluments.

14. Rule 49 of the said rules, which pertains to amount of pension and prescription of minimum qualifying service reads as under:

9. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service. (2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.; (b) 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 1[Rupee three hundred and seventy-five] per mensem ; (c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to 3[three months] and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee."

15. The Rule making authorities framed the CCS (Pension) Rules, 1972 with a clear object and purpose of providing safe guards to the Government servants in their later years of life, by way of pension, who have given their sweat and blood during their long service.

16. The Hon ble Apex Court in various JudgmentS has categorically declared that pension is not a bounty and it is a part of salary of a Government servant payable during the period of his service but being paid after his retirement, as a social security measure.

17. As per Rule 40 of the Pension Rules a Government servant who was compulsorily retired from service as a penalty may be granted pension or gratuity or both as per the prescribed rates. As per Rule 41, even a Government servant, who is dismissed or removed from service, may also be granted pension, in the form of compassionate allowance, however, subject to certain conditions.

18. The forfeiture of past service is provided in the Rules under two circumstances One is under Rule 24 and the other is under Rule 26.

19. The object of Rule 24 is that a Government servant who was dismissed or removed from service for his grave misconduct should not be allowed to take benefit from his past service in which he conducted himself as unbecoming of a servant of the Government. But, as observed above, Competent Authority is provided with power to grant pension, in the form of Compassionate Allowance, even to such a government servant, who was dismissed or removed from service for misconduct, under Rule 41. Whereas the object of Rule 26 is to provide benefit of past service to a Government servant who takes up another appointment whether temporary or permanent under the Government after resigning from his earlier post or service. A combined reading of all the sub rules of Rule 26 clearly indicates that the intention of the rule making authority is not to deprive a Government servant who resigned from his service or post, after rendering the required qualifying service, from receiving the pension. It is only intended for the purpose of adding or not adding the past service of a Government servant who takes up another appointment with the Government after resigning from the earlier

service. In this view of the matter, the respondents cannot apply Rule 26(1) to the applicant, in isolation, who resigned from service after rendering the required qualifying service of 10 years and who has not taken up any further employment with the Government.

20. In Sheelkumar Jain's case (supra), on which the learned counsel for the applicant places reliance, the appellant therein after rendering 20 years of qualifying service (as prescribed at the relevant time) served a letter dated 16.09.1991 intimating his intention to resign and requesting to treat the said letter as three months notice and to relieve him from service. His resignation has been accepted w.e.f. 16.12.1991, i.e., after completion of three months notice. Thereafter, the Government introduced Pension Scheme of 1995 which was made applicable to those employees who were in service on or after 01.01.1986 but had retired before the 1st day of November, 1993. On 20.10.1995 the appellant submitted his option opting for the Pension Scheme but the same was rejected on the ground that he resigned before 01.11.1993. The Hon'ble Apex Court held that though the appellant in his letter dated 16.09.1991 used the word 'resigned', the letter was a three months notice for voluntary retirement, and since the appellant had rendered 20 years of qualifying service for voluntary retirement under the Pension Scheme of 1995, he was entitled to the pension and such pension should not be denied to him by saying that he had resigned from service and had not taken voluntary retirement. It was further held that 3. The aforesaid authorities would show that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the Court will have to keep in mind the purposes of the statutory provisions. The general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service in the Insurance Companies. Clauses 22 and 30 of the Pension Scheme, 1995 cannot be so construed as to deprive of an employee of an Insurance Company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.

14. In the result, we set aside the orders of the Division Bench of the High Court in the Writ Appeal as well as the learned Single Judge and allow this appeal as well as the Writ Petition filed by the appellant and direct the respondents to consider the claim of the appellant for pension in accordance with the Pension Scheme, 1995 and intimate the decision to the appellant within three months from today. There shall be no order as to costs.

21. The facts in Sheelkumar Jain's case (supra), squarely applicable to the applicant's case, since he also rendered the minimum qualifying service for pension, before he submits his resignation, and, therefore, the present OA deserves to be allowed.

22. In *Gorakhpur University & Others v. Dr. Shitla Prasad Nagendra and Others*, (2001) 6 SCC 591, the Hon'ble Apex Court observed as under:

... This Court has been repeatedly emphasising the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest ...

23. The Hon'ble Apex Court in *Madan Singh Shekhawat v. Union of India and Others*, (1999) 6 SCC 459, observed as under:

3. It is the duty of the Court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

14. In *Seaford Court Estates Ltd. v. Asher*, (1949) 2 All ER 155, Lord Denning, L.J. (as he then was) held :-

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament - and then he must supplement the written word so as to give "force and life" to the intention of the legislature..... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

15. This rule of construction is quoted with approval by this Court in M. Pentiah v. Muddala Veeramallappa, (1961) 2 SCR 295 : (AIR 1961 SC 1107) and also referred to by Beg, C.J. in Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 3 SCR 207 : AIR 1978 SC 548 : (1978 Lab IC 467) and in Hameedia Hardware Stores, represented by its Partner S. Peer Mohammed v. B. Mohan Lal Sowcar, (1988) 2 SCC 513 : (AIR 1988 SC 1060).

16. Applying the above rule, we are of the opinion that the rule-makers did not intend to deprive the Army Personnel of the benefit of the disability pension solely on the ground that the cost of journey was not borne by the public exchequer. If the journey was authorised, it can make no difference whether the fare for the same came from the public exchequer or the Army Personnel himself.

17. We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an Army Personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised to avail the leave for leaving the station of posting, an Army Personnel uses what is known as "travel warrant" which is issued at public expense, same will not be issued if person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are used rather loosely for the purpose of connoting the necessity of proceeding or returning from such journey authorisedly. Meaning thereby, if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised.

18. Since on facts there is no allegation in this case that the appellant while travelling to his leave station on the fateful day was travelling unauthorisedly, we are of the opinion that he is entitled to the benefit of disability pension as provided under the Rules.

24. In D.S.Nakara v. Union of India, (1983) 1 SCC 305, it was held:

9. 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 fall of life when physical and mental prowess is ebbing corresponding to ageing process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey-day 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 allowances 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 a Government employee is earned by rendering long and efficient 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 d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

25. To sum up, the concept of pension has been considered by the Hon ble Apex Court time and again and in catena of cases, it has been observed that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for past service. It is a social security plan consistent with the socio-economic requirements of the constitution when the employer is a State within the meaning of Article

12 of the Constitution rendering social justice to a superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied (See: A.P.Srivastava vs. Union of India, (1995) 6 SCC 227, Vasant Gangaramsa Chauhan v. State of Maharashtra, (1996) 10 SCC 148, Subrata Sen v. Union of India, (2001) 8 SCC 71, Union of India v. P.D.Yadav, (2002) 1 SCC 405), Grid Corporation of Orissa v. Rasananda Das (2003) 10 SCC 297, All India Reserve Bank Retired Officers Association v. Union of India, 1992 Supp (1) SCC 664).

26. A comprehensive reading of the entire pension scheme under the CCS (Pension) Rules, 1972 clearly establishes, it is a beneficial legislation and hence Rule 26 requires a liberal interpretation, so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule. As observed above, the object of Rule 26 is to provide the benefit of past service to those who take up another employment under the Government, after resigning to the earlier service or post even before completing the qualifying service, for fixation of pay and pension in the new post or service, but not to deprive pension to those who were allowed to resign unconditionally, after rendering the qualifying service of 10 years. That is why, the Rules, though provided for granting of pension, even to a person, who was compulsorily retired by way of penalty under Rule 40, or to a person who was dismissed or removed from service in the form of Compassionate Allowance but not provided any such power to the Competent Authority under Rule 26(1), in respect of a person who resigned on his own volition, after rendering qualifying service of 10 years. Definitely, it was not the intention and object of the Rules, to put a tainted employee who was imposed with a punishment of compulsory retirement or dismissal or removal for his proven misconduct above an employee who was allowed to resign from service unconditionally after rendering the required qualifying service of 10 years. Therefore, the respondents cannot deny the pension and other benefits under the CCS (Pension) Rules, 1972 to the applicant, by applying Rule 26(1), in isolation.

27. It is the settled legal position that no Court can issue mandamus directing the authorities to refrain from enforcing any provision of law as it would amount to compelling the authorities to violate law. However, if a particular provision of law violates the Fundamental Right of a citizen, in any manner, the Courts are duty bound to read down the said provision and to interpret the same in accordance with its object.

28. Another aspect of Rule 26(1) of the CCS (Pension) Rules, 1972 is that, coupled with Rule 26(2), it compels a Government servant, who resigned from his post, to take up once again Government service only, to enable him to count his past service for the purpose of fixation of his pension. The Constitution of India guarantees to all its citizens certain Fundamental Rights under Part-III. Article 19 (1)(g) of the Constitution provides that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business. The right guaranteed by Clause (g) of Article 19(1), namely, freedom of profession, trade or business, is intended to ensure that citizens right to business does not depend on grant by the State and that the State cannot prevent a citizen from carrying on a business, except by a law imposing a reasonable restriction in the interest of the general public. Of course, there is no right where the business is dangerous or immoral, such a business may be absolutely prohibited or may be required to be licensed. A citizen cannot be compelled to do a certain business. These principles equally applicable to a profession or an occupation or a service also.

29. If a Government servant, after resigning from his post, takes up another appointment under the Government, is entitled for counting of his past service for the purpose of granting pension. If the same Government servant, after resigning from his post, takes up appointment in a private organization or takes up any business, entails forfeiture of his past service as per Rule 26 (1) of the said Pension Rules. Therefore, Rule 26(1), if applied in isolation to a Government servant, who resigns from service, indirectly infringing his Fundamental Right guaranteed under Article 19(1)(g) of the Constitution of India without there being any valid reason. On the other hand, the same is also against the public interest, since the object of pension rules itself is to provide social security to the Government servants, by way of pension, but not to deny the same, even to a dismissed, removed or compulsorily retired government servant.

30. In these circumstances and for the aforesaid reasons, the OA is allowed. The respondents are directed to consider the case of the applicant for granting pension and other benefits, without reference to Rule 26(1) of the CCS (Pension) Rules, 1972, and to pass appropriate orders and to pay the monetary benefits with arrears within 60 days from the date of receipt of this order. The respondents shall also pay interest on the arrears amount, as per the rates prescribed under the Gratuity Act, 1972. In the circumstances, there shall be no order as to costs.

(V. Ajay Kumar)

Member (J)

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