

(2010) 05 DEL CK 0214

In the Delhi High Court

Case No : Writ Petition (C.) No. 3654 of 2010

Amitava Bhowmick

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 30, 30(2)
Constitution of India, 1950 — Article 226

Citation : (2010) 05 DEL CK 0214

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Shah Nawaz Hasan, for the Appellant; Aman Ahluwalia, for Respondents Nos. 1 to 3 and Amitesh Kumar, for AICTER (R-4), for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.

C.M. No. 7311/2010

For the reasons stated in the application, delay in refilling the petition is condoned and the application is allowed.

W.P. (C.) No. 3654/2010

1. The short point involved in the petition is as to whether the petitioner was entitled to weightage of added years of service in accordance with Rule 30 of the CCS (Pension) Rules, 1972 which reads as under:

30. Addition to qualifying service in special circumstances: (1) [A Government servant who retires from a service or post after the 31st March, 1960], shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of

recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one

(a) for which Post-graduate research or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty five years of age are normally recruited.

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government Service is not less than ten years;

Provide further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

Provided also that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this Sub-rule forgoing the counting of the past service.

2) A Government servant who is recruited at the age of thirty-five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in Sub-rule (2) once exercised, shall be final.

2. The Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") did not agree with the petitioner that he was entitled to such consideration while dismissing his O.A. bearing No. 1108/2008 vide order dated 15.04.2009. By the impugned order the Tribunal made the following observations:

5. Rule 30 of the CCS (Pension) Rules provided that a Government servant on retirement shall be eligible to add to his service qualifying for superannuation pension, a period not exceeding 1/4th of the length of his service or the actual period by which his age at the time of recruitment exceeded 25 years for a maximum of five years, in certain cases. The condition was that he should have been appointed to a post for which Post Graduate Research or specialized qualification or experience in Scientific, technological or professional fields was notified as essential. It was also a condition that normally a person should be above the age of 25, for becoming eligible for recruitment. In addition to the above, the rule provided that the concession shall be admissible only if the recruitment rule in respect of the service/post, contained specific provision that the service/post is one, which carries the benefit of the said rule. From the materials produced, it is clear that the obstructions prevailing are

unsurmountable as far as the applicant is concerned.

6. Mr. Alam has taken us to the special rules in respect of the recruitment to the post, viz Annexure R-2. Post Graduation or Specialized Qualification, etc. are not shown there as an essential. There is no stipulation that the minimum age for recruitment should be 25 years. The qualification prescribed is Degree or equivalent diploma and seven years experience in Industrial Designing. More importantly, the rules do not provide that the benefits arising from Rule 30 of the CCS (Pension) Rules would be available to the post. The cumulative circumstance as above convincingly shows that the stand of the respondents is neither perverse nor unwarranted.

7. In respect of eligible persons, relaxation might have been extended, but so long as rule position is against the cause of the applicant, it may not be possible for us to direct that notwithstanding he should get a declaration as prayed for. Original Application is, therefore, dismissed. No costs.

3. A bare perusal of the aforesaid order goes to show that the Tribunal refused to grant the benefit of added years of service for the purpose of calculating the pension of the petitioner on the ground that he was not fulfilling either of the conditions for granting such benefits inasmuch as neither the post on which he was appointed required his election only after the age of 25 years nor the said appointment was based upon the qualifications prescribed of post-graduation or specialized qualification as was contended on behalf of the petitioner. It may be of relevance to take note of the qualifications prescribed for the post which are available at page 98A and reads as under:

6 7 Not exceeding 45 years (Relaxable Essential: for Government servants)
(i) Degree or equivalent Diploma in Industrial Design or in Art Note: The crucial date for (Industrial Design/Scultures) of a determining the age limit shall be recognized University/Institutions the closing date for receipt of or equivalent) applications from candidates (ii) Five years experience in (other than those in Andaman and industrial designing with Nicobar Islands and Lakshadweep) particular reference to the application of artistic and aesthetic values to the designing of Industrial Products, in Central/State Government Departments/ Organisations or in a well-established firm.) (Qualifications relaxable at the discretion of the Union Public Service Commission in case of candidates otherwise well qualified in particular, the qualification regarding expert is relaxable in case of candidates belonging to the scheduled tribes for posts reserved for them.)

4. From the aforesaid, it is apparent that the post at which the petitioner was appointed was not a post where persons above the age of 25 years are normally recruited. The requirement of the rule for the purpose of qualification need a degree equivalent to diploma in Industrial Design. Moreover, the requirement of the rules does not provide that it is a post where the benefits arising from Rule 30 of the CCS (Pension) Rules would apply.

5. It is the contention of the petitioner that the qualification which he was having was equivalent to a degree and that he was also having experience of five years which was the basis of his appointment as Industrial Designer and thus, he was entitled to the benefits as stated above. In this regard, he has submitted that the Diploma which he had obtained was recognized as equivalent to a degree. He has referred to a letter of Deputy Director of the respondents in this regard available at page 33 which reads as under:

No. A-19018(761)/84-Admn (G)

Government of India

Ministry of Small Scale Industries

Office of the Development Commissioner

(Small Scale Industries)

Nirman Bhawan, New Delhi

Dated, the 2nd December, 2003

To

The Director,

SISI,

New Delhi.

Subject:- Request from Shri Amitava Bhowmick, Industrial Designer, SISI, New Delhi for incorporation of provision regarding benefit added years of service in the RRs for the post of Industrial Designer in SIDO--regarding.

Sir,

I am directed to refer to your letter dated the 29th October, 2003 on the subject mentioned above and to say that the request contained therein has been examined in this office in consultation with Integrated Finance Wing. The benefit of added years of service is admissible under Rule 30 of CCS (Pension) Rules, 1972 subject to fulfillment of certain conditions such as;

(i) The service or post should be one for which postgraduate research or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(ii) To which candidates of more than 25 years of age are normally recruited.

The qualification and experience prescribed in the RRs for the post of Industrial Designer/Asstt. Industrial Designer in SIDO do not seem to satisfy the above conditions and hence there is no justification for incorporation the provision regarding benefit of added years of service in the RRs for the post of AID/ID, Shri Bhowmick may be informed accordingly.

Yours Faithfully

Sd/-

(S.V.N. Pillai)

Deputy Director (Admn.)

6. This letter in no way meets the aforesaid conditions raised by the petitioner.

7. The petitioner has also relied upon letter dated 07.12.2006 by referring to case of some of the persons by referring to Rule 30. This information has been provided by the respondents through an RTI application which reads as under:

Sl. No. Name and Designation of the Qualification Officer 1. Shri P.K. Goyal, Indl. B.E. (Mechanical) with 8 years Adviser Experience 2. Shri S.K. Kinra, Director B.E. (Mechanical) with 6 years Experience 3. Shri R.N. Sarma, Director B.Tech. (Chemical Engineering) with 5 years Experience 4. Shri S.R. Singh, Director M.Sc. (Chemical) with specialization organic Chemistry with 6 years experience 5. Shri. P.K. Mukherjee, Degree ME with 5 years Director experience. 6. Shri A.K. Gogia, Decree in Electrical Director Engineering with 5 years experience 7. Shri. M.S. Meena, Post Graduate in Director Commerce with Specialization Management

8. It is, however, not clarified by the petitioner as to how this chart helps the case of the petitioner.

9. For the foregoing reasons, we do not find any illegality or irregularity in the order of the Tribunal which would entail any interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed with no order as to costs.

10. All the pending applications are also disposed of.