
(2018) 06 CAT CK 0006

In the Central Administrative Tribunal

Case No : Original Application No. 1889 Of 2015

Chitturi Venugopala Rao

APPELLANT

Vs

Defence Research And Development Organization And Ors

RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 06 CAT CK 0006

Hon'ble Judges : Jasmine Ahmed, J

Bench : Single Bench

Advocate : Motahar Hossain, Harvinder Oberoi

Final Decision : Dismissed

Judgement

Jasmine Ahmed, J

1. This OA has been filed under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:

"1) direct the respondent authorities to make payment of pension and all the pensionary benefits/ retiral benefits/ pro rata pension due on the applicant.

2) direct the respondent authorities to pay arrears of pension from 1.02.2008 till date of payment."

2. The undisputed fact of the case in hand is that the applicant who was working as Scientist `E", tendered his resignation on 1.11.2007 to the Scientific Advisor to RM, DG R&D, Directorate of Personnel, Ministry of Defence due to family constraints as he was unable to continue his service in DRDO. He also requested that his resignation be accepted and he be relieved on or before 31.01.2008.

3. The applicant joined ARDE, Pune on 22.09.1994 as Scientist `B" after successful completion of one year Armament Technology Fellowship Course at DIAT, Pune. In the year 1987, the applicant got promoted as Scientist `C". He also received "Best Young Scientist Award of ARDE" in the year 1999 and

thereafter, he was promoted as Scientist `D" in the year 2002. On receiving his request for resignation, the Directorate of Personnel, DRDO, Ministry of Defence, Govt. of India vide letter dated 21.01.2008 conveyed the approval of the competent authority to the acceptance of resignation from service in respect of the applicant on personal grounds. The Armament R&D Estt. (ARDE), Defence R&D Organization (DRDO), Ministry of Defence, Government of India sent a letter dated 31.01.2008 stating that the competent authority has accepted the applicant's resignation and he has been relieved of his duties from the Establishment with effect from 31.01.2008.

4. It is contended by the learned counsel for the applicant that the total length of service rendered by the applicant at ARDE is 13 years and 5 months (excluding 1 year fellowship course at DIAT, Pune). The applicant thereafter sent a letter dated 21.08.2013 to the Director, Armament Research and Development Establishment stating that he is eligible for obtaining pension as he has successfully rendered 13 years and 5 months service (excluding 1 year fellowship course at DIAT, Pune) and hence requested to grant him pension from the next day of his retirement i.e. 1.02.2008. There were various letters exchanged between the applicant and the respondents dated 21.11.2013, 24.02.2014, 8.05.2014, 15.05.2014, 19.06.2014, 25.06.2014, 31.07.2014 and 16.12.2014 wherein in spite of making several requests for release of pension and pensionary benefits, the applicant has been denied the same by the respondent authorities. Lastly, vide letters dated 30.01.2015 and 16.02.2015, the respondents have denied pension and pensionary benefits to the applicant in spite of having rendered total service of 13 years and 5 months. Hence this OA.

5. The learned counsel for the applicant stated that resignation of the applicant be taken as voluntary retirement in the facts and circumstances of the present case. He further stated that the Hon"ble Apex Court has held in the case of D. S. Nakara and others Vs. U.O.I. 1983(1) SCC 305 that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past service rendered. As the pension is a monthly affair, it will not attract bar of limitation and in this regard he placed reliance on the judgment of the Hon"ble Apex Court in the case of U.O.I. and others Vs. Tarsem Singh and also argued that as not getting pension amounts to a continuing wrong hence law of limitation does not apply on pension cases.

6. Learned counsel for the applicant further relied on the judgment of the Principal Bench of the Tribunal in OA 1619/2012, Sh. Amar Singh Vs. State of NCT of Delhi and others. The Tribunal allowed the said OA and directed the respondents to release pension and pensionary benefits to the applicant therein. Reliance was also placed on the judgment of the Hon"ble Apex Court in Sheelkumar Jain Vs. The New India Assurance Co. Ltd. & Others, AIR 2011 SC 2990, wherein also the appellant, after rendering twenty years of qualifying service, resigned. The Hon"ble Apex Court felt that the appellant therein could not be denied pension and pensionary benefits as he had resigned from service

instead of taking voluntary retirement. Learned counsel for the applicant vehemently argued that the case in hand is squarely covered by the judgment in Sheelkumar Jain (supra) because herein also the applicant though had tendered resignation with the misconception instead of asking for voluntary retirement but his intention was to retire from service as his family circumstances were not permitting him to continue in service. As the applicant herein has also completed service of 13 years and 5 months and has thus qualified for pensionary benefits, the respondents must consider his case for grant of pension and pensionary benefits.

7. In support of applicant's claim, learned counsel for the applicant further placed reliance on the judgment passed by the Hon"ble Punjab and Haryana High Court in Mehar Singh Vs. State of Punjab and ors., 2003 (3) SLR 624, where the petitioner resigned after putting in more than ten years of service. The Hon"ble High Court held as follows:

"7. Since the petitioner resigned after he had put in more than 10 years of service, he is entitled to pension and other retiral benefits as premature retirement from service and voluntary resignation from service will have the same effect i.e. one is retiring. So, this writ petition is allowed. Respondent-State of Punjab is directed to release the pension and other retiral benefits to the petitioner....."

8. The learned counsel for the applicant also relied on the judgment passed by the Hon"ble High Court of Delhi in Sanjeev Verma Vs. District and Session Judge, 2013 (4) SLR 700 (Delhi), where also in para 26 the Hon"ble High Court has decided as follows:

"26. Since the petitioner has put in more than twelve years of service, as per the Rule 49(b) of Swamy's CCS Pension Rule, the petitioner is entitled for the proportionate amount of pension admissible under the said Rule. However, Swamy's Pension Rules, Chapter 6, Pension and Gratuity says that if the government servant retires from service with a qualifying service of less than ten years, he is not entitled for the payment of pension. In my opinion, this is not the case of the petitioner."

and ultimately, the Hon"ble High Court allowed the Writ Petition in favour of the petitioner.

9. The respondents have filed their counter and contested the case. The first argument advanced by the learned counsel for the respondents is that this case is barred by limitation as the applicant was relieved from service on 31.01.2008 whereas the OA has been filed after a delay of more than seven years. The learned counsel for the respondents also stated that it is settled proposition of law that repeated representations do not extend the period of limitation nor can grant a lease of life in a stale case. It is also argued by the learned counsel for the respondents that resignation forfeits the past service and the applicant has tried to equate resignation with retirement, which is nothing but an afterthought.

10. The learned counsel for the respondents further contended that the judgment relied upon by the applicant in Shri Amar Singh (supra) was challenged before the Hon"ble High Court of Delhi in W.P. (C) 5428/2013 and the Hon"ble High Court, having considered the issue in detail in the light of several judgments of the Hon"ble Apex Court, came to the conclusion that resignation from service would forfeit the past service of an employee and further it would not be treated as qualifying service for pension under CCS (Pension) Rules 1972. It is prayed that on this ground the OA merits dismissal.

11. Heard the rival contentions of the parties and perused the documents on record.

12. The short issue involved in this case is whether after tendering resignation after a total service of 13 years and 5 months, the applicant is entitled for pension and pensionary benefit or not.

13. The counsel for the applicant placed his reliance in the case of Sheelkumar Jain Vs. The New India Assurance Co. Ltd. & Others, (Supra) and stated that on the basis of the decision of Sheel Kr. Jain, he is entitled to get the pension. The counsel for the applicant also placed his reliance in the case of Amar Singh Vs. State of NCT of Delhi and Ors. in O.A No. 1619/2012 of this Tribunal and stated that O.A of Amar Singh (Supra) has been allowed by this Tribunal. It is seen that the judgment in the case of Amar Singh (Supra) was challenged before the Hon"ble High Court of Delhi by the respondents and the Hon"ble High Court has given a detailed discussion in regard to pension rules as well as various judgments of Hon"ble Apex Court and ultimately held that resignation and retirement cannot be equated. The dictionary meaning of the word "retire" is to Leave one's job and cease to work, typically on reaching the normal age for leaving service. Whereas, dictionary meaning of word "resign" is voluntarily leaving a job or position of the office. The bare reading of the dictionary meaning gives a difference between the two words as the concept of age is always attached to the word "retire" and to the word "resign" no element of age is attached. The Hon"ble High Court of Delhi has while allowing the Writ Petition filed by the respondents has discussed in detail Sheelkumar Jain's case (supra) and stated that in Sheelkumar's case the Apex Court was concerned with the insurance scheme and not with pension rules as applicable to the Government employees. It is also held that the provisions of the scheme and the rules in insurance scheme and pension rules are not para-materia and Sheelkumar Jain's case has been categorically discussed while allowing the writ petition. The Hon"ble High Court giving categorical finding has held that giving resignation from service would forfeit the past service rendered. It would not amount to a qualifying service for pension under the Pension Rules, 1972. While going through the judgment passed by the Hon"ble High Court in the case of Amar Singh (Supra) decided on 07.11.2013, in my considered opinion, the issue involved in the instant case in hand is completely covered by the decision of Hon"ble High Court of Delhi in Writ Petition No. 5428/2013 Amar Singh & Ors.

Vs. Govt. of NCTD and Ors. Accordingly, following the dicta held by the Hon"ble High Court, this O.A is dismissed. No costs.