
(2001) 09 AHC CK 0060
In the Allahabad High Court
Case No : C.M.W.P. No. 4377 of 1999

J.P. Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 10, 35(2)
Constitution of India, 1950 — Article 226
Uttar Pradesh Fundamental Rules — Rule 56

Citation : (2001) 4 AWC 2942 : (2001) 91 FLR 864

Hon'ble Judges : U.S. Tripathi, J;G.P. Mathur, J

Bench : Division Bench

Advocate : A.D. Prabhakar, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The question which requires consideration here is whether a person can claim pension for the same period from two separate and distinct employers.

2. The petitioner was a practising advocate and on 16.9.1977, he joined as Additional District Judge in the U. P. Higher Judicial Service. His date of birth is 1.9.1933 and he would have attained the age of superannuation, which was then 58 years, on 31.8.1991. He applied for and was granted voluntary retirement on 31.12.1989 and, thereafter, joined as Member, Central Administrative Tribunal on 1.1.1990 from where he retired on 31.8.1995 after attaining the age of 62 years. Thereafter, he was appointed as Banking Ombudsman in the State of Bihar and worked on the said post till 31.8.1998.

3. The petitioner took voluntary retirement from the U. P. Government Service one year and eight months before the scheduled date of his retirement which was 31.8.1991. He made a representation to U. P. Government that this period of 1 year and 8 months be added to the period of the service rendered by him for the purpose of grant of pension to him. The representation was rejected on

16.3.1994 and thereafter he filed some more representations which were also rejected on 4.7.1998. The present writ petition under Article 226 of the Constitution has been filed praying that the order dated 4.7.1998 passed by the State Government be quashed and a writ of mandamus be issued commanding the State of U. P. to add 20 months additional service for the purpose of fixing his pension in the U. P. Higher Judicial Service.

4. Before examining the contentions raised, it will be useful to refer to the statutory provisions which have a bearing on the controversy in hand. Section 10 of Administrative Tribunals Act, 1985, provides that the salaries and allowances payable to and the other terms and conditions of service including the pension, gratuity and other retirement benefits of the Chairman, Vice-chairman and other Members shall be such as may be prescribed by the Central Government. In exercise of power conferred by Section 35(2)(c) of the Act, the Central Government has made Central Administrative Tribunal (Salaries and Allowances and Conditions of Service of Chairman, Vice-chairman and Members) Rules, 1985 (hereinafter referred to as the Rules), Rules 5 and 8 of the rules are reproduced below :

"Rule 5. Retirement from parent service on appointment as Member. --(1) The Chairman, a Vice-chairman or a Member who on the date of his appointment to the Tribunal, was in service under the Central Government or a State Government, shall seek retirement from such service before his appointment to the Tribunal and in the case of a sitting Judge of a High Court who is appointed as Chairman, a Vice-chairman, his service in the Tribunal shall be treated as actual service within the meaning of para 11 (b) (i) of Part "D" of the Second Schedule to the Constitution.

(2) On such retirement as is provided for in Sub-rule (1), the Chairman, Vice-Chairman and Member :

(i) shall be entitled to receive pension and gratuity in accordance with the retirement rules applicable to him ;

(ii) shall not be allowed to carry forward his earned leave but shall be entitled to receive cash equivalent to leave salary, if any, in accordance with the rules applicable to him prior to his retirement."

"Rule 8. Pension.--(1) Every person appointed to the Tribunal as the Chairman, a Vice-Chairman or a Member shall be entitled to pension provided that no such pension shall be payable :

(i) if he has put in less than two years of service ; or

(ii) if he has been removed from an office in the Tribunal under Sub-section (2) of Section 9 of the Act.

(2) Pension under Sub-rule (1) shall be calculated at the rate of rupees fourteen hundred per annum for each completed year of service and irrespective of the

number of years of service in the Tribunal :

provided that the aggregate amount of pension payable under this rule together with amount of any pension including commuted portion of pension, (if any) drawn or entitled to be drawn while holding office in the Tribunal shall not exceed the maximum amount of pension prescribed for a Judge of the High Court."

5. Fundamental Rule 56 (a) of Financial Handbook, Vol. II, Parts II to IV provides that except as otherwise provided in other clauses of this rule, every Government servant shall retire from service on the afternoon of last day of the month in which he attains the age of fifty-eight years. F. R. 56 (c) provides that a Government servant may, by notice to the appointing authority, voluntarily retire at any time after attaining the age of forty-five years or after he has completed qualifying service for twenty years. The claim of the petitioner is founded on F. R. 56 (e) which reads as under :

"(e) A retiring pension shall be payable and other retirement benefits, if any, shall be available in accordance with and subject to the provisions of the relevant rules to every Government servant who retires or is required or allowed to retire under this rule.

Provided that where a Government servant who voluntarily retires or is allowed voluntarily to retire under this rule, the appointing authority may allow him, for the purposes of pension and gratuity. If any, the benefit of additional service of five years or of such period as he would have served if he had continued till the ordinary date of his superannuation, whichever be less....."

6. The proviso to F. R. 56 (e), therefore, confers discretion on the appointing authority to give the benefit of additional service for the purpose of pension and gratuity to a Government servant, who has taken voluntary retirement, of the period as he would have served if he had continued till the ordinary date of his superannuation. There is a rider that this benefit of additional service cannot exceed five years.

7. The petitioner had taken voluntary retirement from the Higher Judicial Service one year and eight months before his normal date of superannuation and he made representations for giving benefit of this period for the purpose of pension. The State Government rejected his representations on 16.3.1994 on the ground that the aforesaid benefit can be given only to such pensioner who is getting pension from the same employer and not to those who are getting pension from two separate employers. His second representation was rejected by the order dated 3.6.1993 and the reasons given therein are that the benefit of additional service is permissible only in such cases where the authority granting permission for voluntary retirement specifically permits this benefit of additional service in the order by which request of voluntary retirement is accepted. The second reason given is that, in reality, the petitioner did not retire from service and he was working as Member of the Central Administrative Tribunal and the period spent in service in the Tribunal cannot be counted for grant of pension both in

the State Government and also in the Central Administrative Tribunal.

8. The petitioner, who argued in person, has placed strong reliance on certain observations made in *Deokinandan Prasad Vs. The State of Bihar and Others*, , wherein it was held that pension is not a bounty payable on the sweet-will and pleasure of the Government and, on the other hand, the right to pension is a valuable right vested in a Government servant. Emphasis has also been laid on the observations made in paragraph 30 of the reports that the grant of pension does not depend upon an order being passed by the authority to the effect. It may be that for the purpose of quantifying the amount, having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. Reference has also been made to *D.S. Nakara and Others Vs. Union of India (UOI)*, and *State of Punjab and Another Vs. Iqbal Singh*, , where the aforesaid view was reiterated.

9. Rule 5 provides that any person who was in service under the Central Government or a State Government shall seek retirement from such service before his appointment to the Tribunal as a Member, Vice-Chairman or a Chairman. However, there is an exception in the case of a sitting Judge of a High Court and his services in the Tribunal shall be treated as actual service within the meaning of para 11 (b) (i) of Part "D" of the Second Schedule to the Constitution. Clause (i) of Sub-rule (2) further provides that on such retirement, he shall be entitled to receive pension and gratuity in accordance with the retirement rules applicable to him. Therefore, a person who has sought retirement from service shall be entitled to receive pension for the service already rendered by him in accordance with the Rules which were applicable to him prior to the date on which he sought retirement. Rule 8 provides for pension which is payable to a Chairman, Vice-Chairman or a Member of a Central Administrative Tribunal and it gives the rate on which the pension is to be calculated. Thus, under Rule 8 a separate pension is to be payable to a Member of a Tribunal which shall be calculated on the basis of the total period of service rendered in the Tribunal. The rules, thus, contemplate two separate pensions, one for the service rendered under the State Government or the Central Government, as the case may be, and the other, for the service rendered in the Central Administrative Tribunal, and the two pensions cannot be clubbed with each other. Thus, there can be no overlapping of the period of service rendered with the State Government or the Central Government with that of the period rendered in the Tribunal.

10. The petitioner took voluntary retirement from the Higher Judicial Service on 31.12.1989 but he wants benefit of the period when he would have retired in normal course after attaining the age of 58 years, i.e., the period upto 31.8.1991. But, the petitioner worked as Member, C.A.T., from 1.1.1990 to 31.8.1995 and in this additional period of which he wants the benefit, he was already working in the Central Administrative Tribunal. It is conceded by the

petitioner that this additional period from 1.1.1990 to 31.8.1991 has been counted towards the service rendered by him in the Tribunal and by virtue of Rule 8. he is getting pension for the said period. In case the petitioner is granted the benefit of adding this period of one year and eight months in the service rendered by him in H.J.S. for the purpose of grant of pension by the State Government, the result would be that he would get pension for the same period (1.1.1990 to 31.8.1991) from two distinct separate sources, namely, the State Government and also from Central Government. The Rules clearly do not contemplate grant of pension for the same period by two separate and distinct employers. The principle enunciated in the authorities cited by the petitioner that pension is not a bounty but is paid for the services rendered, cannot help the petitioner as he is already getting pension for the services rendered in the said period which were in the Tribunal. It is not the case of the petitioner nor can he possibly contend that he is not getting pension for the said period of 1.1.1990 to 31.8.1991, and in this view of the matter, the reasons given by the State Government for rejecting his representations are, in our opinion, perfectly correct.

11. When the State Government allows the benefit of additional service to an employee for the purpose of grant of pension to him, it is notionally deemed that he rendered service in the said period also. The petitioner joined the Central Administrative Tribunal and was working as Member therein in the said period. In view of the fact that he took up another assignment, it is not possible to deem notionally that he was working in the U. P. Government as a Member of the H.J.S. and simultaneously, he was also working as a Member of the Central Administrative Tribunal in the same period.

12. The petitioner has also placed strong reliance on *Union of India v. K.B. Khare and Ors.*, 1994 (Supp.) 3 SCC 502, which is a case relating to a District Judge in M. P. Judicial Service who was subsequently appointed as Member of the Central Administrative Tribunal. The claim of Sri Khare to compound the two services to get one consolidated pension was upheld by the High Court. The Apex Court, allowing the appeal filed by the Union of India, held that the services rendered in the State Judicial Service and as a Member of the C.A.T. could not be clubbed. We do not find any such observation in the judgment which may be of any assistance to the petitioner. The petitioner has also submitted that the High Court had granted "no-objection certificate" to his request for adding the period of one year and eight months and, therefore, the State Government has erred in rejecting his representation. A copy of the no objection certificate dated 12.10.1992 has been filed as Annexure-2 to the writ petition and this shows that the High Court had merely said that it had no objection to the enhancement of period of service for one year and eight months for pensionary benefits. In our opinion, this no-objection certificate cannot be treated as a direction by the High Court to the State Government to grant him the benefit of additional service and, as such, it does not advance his case in any manner.

13. The writ petition was argued by the petitioner himself on 14.8.2001 and on his request, it was adjourned to for a fortnight as he wanted to make some further legal submissions. However, on the said date an application was placed before us for accepting a supplementary-affidavit which contains some new facts. Normally no new facts can be brought on record at a stage when arguments are already complete as it means further adjournment in order to give time to the State to file counter-affidavit. Therefore, we have not been able to ascertain the correctness or otherwise of the facts pleaded in the supplementary-affidavit. However, the documents annexed with the supplementary-affidavit show that three officers of U. P. H.J.S. who had become Member of U. P. Public Service Tribunal were given benefit of some additional service for the purpose of pension. But here the pension for both the services was to be paid by the U. P. Government and the order clearly mentions that the period for which benefit was being given would be deducted from the period for which they worked in the U. P. Public Services Tribunal and the pension earned for services rendered in the Tribunal would be correspondingly reduced. This shows that the concerned officers would not get two pensions for the same period, and, instead of getting pension for the period of service actually rendered in the Tribunal, they will get pension for the notional service rendered in the H.J.S. The case of the petitioner, as shown above, is entirely different as the State Government has no authority to direct that the pension earned by the petitioner for the services rendered in the Tribunal in terms of Rule 8 may be correspondingly reduced by deducting a period of one year and eight months from the service rendered by him in the Tribunal.

14. The proviso to F. R. 56 (e) uses the expression "the appointing authority may allow him", which shows that a Government servant has no indefeasible right to claim benefit of additional service. The language of the rule shows that a discretion is vested with the appointing authority to grant such a benefit. It is true that the appointing authority cannot act in an arbitrary manner and grant this benefit on whims or sweet-will, but the same has to be done on some valid criteria and in public interest. The reasons given by the authorities that no person can claim pension for the same period from two different sources, appears to be perfectly sound. Even otherwise the petitioner has no equity in his favour. He did not take voluntary retirement on account of some compelling reason like illness or adverse family circumstances, but to avail of an opportunity to work on a respectable higher post for 4 additional years. It may be pointed out that at the relevant time, the age of superannuation in the H.J.S. was 58 years while that of a Member of C.A.T. it was 62 years. During the period of which he wants to get the benefit, he was getting full salary from the C.A.T. besides other perquisites. Later on, he served as a Banking Ombudsman in the State of Bihar which assignment he got by virtue of the fact that he had worked as Member of C.A.T. and in this assignment, he got a fixed salary without any deductions for the two pensions which he was already getting. In the facts and circumstances of the case, the petitioner cannot complain that he has suffered

any hardship on account of refusal by the State Government to grant him benefit of additional service.

15. No other point was urged.

16. In view of the discussion made above, the writ petition is dismissed with costs.