

(2018) 01 CAT CK 0065

In the Central Administrative Tribunal

Case No : Original Application No. 3418 Of 2016, Miscellaneous Application No. 2147 Of 2017

Krishan Kumar Lal

APPELLANT

Vs

Central Public Works Department And Others

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 2, 13, 49
Revised Leave Rules 1933 — Rule 49

Citation : (2018) 01 CAT CK 0065

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Ajesh Luthra, Duli Chand

Final Decision : Dismissed

Judgement

Praveen Mahajan, Member (A), J

1. The applicant has filed the current O.A. with the following relief:-

"(a) Quash and set aside the impugned order dated 03/08/2016 placed at Annexure A/1.

(b) Direct the respondents to compute and pay the terminal benefits due to the applicant along with interest @ 12% on the arrears of payments.

(c) Award costs of the proceedings.

(d) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicant."

2. Briefly stated, the facts of the case are that on 30.09.1963 the applicant was appointed as Section Officer (Civil), re-designated as Junior Engineer (Civil) with the respondents. On 07.10.1970, he was declared quasi-permanent. He continued to work without any break upto 31.05.1976. In 1975, he applied for a higher post of Assistant Engineer (Civil) with the International Airports Authority

of India (IAAI). On being selected for the said post in IAAI, the applicant submitted his technical resignation to the respondents. He was relieved from the said office on 31.05.1976 and he joined the IAAI on the same day i.e. 31.05.1976. He continued to work there as Superintending Engineer (Civil) till he attained the age of superannuation i.e. on 31.12.1997.

3. On retirement, the applicant got gratuity for the period of his service with the IAAI i.e. from 31.05.1976 to 31.12.1997. He submits that though IAAI is a non-pensionable establishment but he is entitled to pro-rata pension and other retiral dues for the service he rendered with the respondents. In this regard, he made several representations to the respondents and also met the concerned officials. He was informed that his case has been considered and sent to Department of Pensions and Pensioners Welfare on 14.01.2016 for consideration. The applicant also approached the Public Grievance Cell. He was informed vide letter dated 08.02.2016 that CPWD had furnished a report vide letter dated 04.02.2016 in view of which his case at Public Grievance Cell stood closed.

4. It is contended in the OA that vide impugned order dated 03.08.2016, the respondents have denied him the retiral benefits on pro rata basis, being ineligible. The ground taken by the respondents is that the employees who left government service on retirement/absorption after 1988 became eligible for pension after 10 years. However, since the applicant was absorbed in 1976, and was only a quasi permanent employee, he was not eligible for pension, as per the relevant rules. The applicant submits that denial of pro-rata service benefits to him, by the respondents, is illegal. He was appointed as Junior Engineer against a permanent vacancy by way of direct recruitment, which, he avers, counts as qualifying service for pension as per Rule 13 and 49 of the CCS (Pension) Rules.

5. It is also brought on record that the applicant was declared confirmed in IAAI on 31.05.1977 i.e. on completion of one year of service vide order dated 11.02.1980. Consequent upon his confirmation, he submitted his technical resignation from the post of Junior Engineer (Civil) to the respondents w.e.f. 31.05.1977, which was not accepted due to non-payment of lien charges towards leave, salary and pension contribution for one year lien period availed with the respondents. However, his technical resignation was accepted vide order dated 28.12.1979 w.e.f. 31.05.1976 after deducting the lien charges from the GPF account.

6. The applicant states that he had rendered continuous service from 30.09.1963 to 31.05.1976 i.e. 12 years and 08 months before being relieved on 31.05.1976 to join IAAI. The lien had been actually retained for one year for which the lien charges have been deducted from his GPF account by the respondents. Therefore, he is entitled for pro-rata service benefit for a period of 13 years and 08 months.

7. The applicant has relied upon the decisions of Hon'ble Supreme Court in the

case of Baleshwar Das Vs. State of UP, (1980) 4 SCC 226, in which the following has been held:-

"A person is said to hold a post in a substantive capacity when he holds it for an indefinite period, especially of long duration in contradistinction to a person who holds it for a definite or a temporary period or holds it on probation subject to confirmation. If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been prescribed and has been approved, one may well say that the post was held by the incumbent in a substantive capacity."

The applicant has also relied on the decision of Hon'ble Supreme Court in the case of Praduman Kumar Jain Vs. Union of India, (1994) 28 ATC 70 where, besides allowing the relief to the retiree, interest @ 12% on the arrears of payments along with a cost of Rs.10,000/- has been imposed upon the government.

8. In the counter affidavit, the respondents submit that the applicant continued to work with IAAI till his superannuation on 31.12.1997 as Superintending Engineer (Civil). On his retirement, the applicant got gratuity for the period of his service with IAAI from 31.05.1976 to 31.12.1997. Since the IAAI is a non-pensionable Govt. establishment, the applicant was not entitled to get pension of any kind. The case of the applicant for pro-rata pension, was considered and submitted to Pay & Accounts Officer (DGW). On their advice, the case file was forwarded to Ministry of Finance for seeking advice. The Ministry of Finance forwarded the case to DOP & PW, whose decision was intimated to the applicant vide letter No. A-38015/16/2015-EC VI/1120-22 dated 03.08.2016, which is reproduced below:-

"In this connection, it may be stated that under Rule 2 of the CCS (Pension) Rules, these rules are applicable to Government servant appointed substantively to civil services and posts in connection with the affairs of the Union, which are borne on pensionable establishments. In the present case, at the time of his absorption, Sh. Lal was a quasi-permanent employee and was not holding substantive appointment in the Government. The rules regarding substantive appointment were later amended in 1988 and as per existing instructions of Government, an employee is declared permanent/substantive on completion of his probation period. Therefore, all those Government employees who leave Government service on retirement/absorption after 1988 become eligible for pension after 10 years if they had completed their probation successfully. These provisions, however, do not apply in the case of Sh. Lal who was absorbed much earlier in 1976 and being only a quasi-permanent employee was not eligible for pension as per the rules applicable at that point in time."

9. The respondents further aver that in the offer of appointment of the applicant it was clearly mentioned that he is being offered a purely temporary appointment

as Section Officer and no gratuity or pension will be admissible for the officiating service. However, he may be granted leave under the Revised Leave Rules 1933/49. He was quasi-permanent at the time of leaving the department and was not on a substantive post. As such, decisions of the Hon'ble Supreme Court relied upon by the applicant are not relevant in his case. As per instructions, the Government employees, who left Government service on retirement/ absorption after 1988 became eligible for pension after 10 years. However, this would not apply in the case of the applicant, who was absorbed as a quasi permanent employee, much earlier in 1976.

10. I have perused the records of the case and considered the rival contentions.

11. The undisputed facts of the case are that the applicant was working in a quasi permanent capacity as Junior Engineer (Civil) in CPWD. He applied for higher post of IAAI and was selected as Assistant Engineer (Civil) to join his new assignment, where he joined on 31.05.1976. On his retirement from IAAI on 31.12.1997, he was paid terminal benefits, which included gratuity. No pension was paid to him as there was no pension applicable to IAAI employees. The applicant has demanded service benefits claiming that he is eligible for pro-rata pension since he served the respondent department for more than 10 years. He seeks shelter under the provisions of Rule-2 of the CCS (Pension) Rules. However, the respondents have clarified that Rule-2 of the said Rules is only applicable to government servants, who are appointed substantively to civil services and posts, which are borne on pensionable establishments. In the present case, at the time of his absorption, the applicant was a quasi permanent employee and not holding any substantive post in the government. The rules regarding substantive appointment were amended only in 1988 wherein it was decided that an employee would be declared permanent/substantive on completion of his probation period. It was further clarified that all the government employee, who leave government service on retirement/absorption after 1988, will become eligible for pension after 10 years if they had completed their probation period successfully. These provisions would not apply in the case of the applicant, who was absorbed almost 12 years before the amendment came into effect. At that point of time, he was a quasi permanent employee and not eligible for pension, as per the then existing rules. In my view, therefore, the applicant has not made out a convincing case for interference by the Tribunal. The O.A. is accordingly dismissed. No costs.