
(2025) 03 CAT CK 0441

In the Central Administrative Tribunal, Principal Bench, New Delhi

Case No : Original Application 1259 Of 2016

Kulwant Singh

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 20-03-2025

Acts Referred:

Civil Services (Pension) Rules, 1972 — Rule 37, 37(1), 37(1)(i), 37(2), 48, 48A

Citation : (2025) 03 CAT CK 0441

Hon'ble Judges : Dr. Chhabilendra Roul, Member (A)

Bench : Single Bench

Advocate : Ajesh Luthra, Gyanendra Singh

Final Decision : Allowed

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The present OA has been filed by the applicant seeking the following reliefs:-

"a) call for the records of the case

b) direct the respondents to forthwith release all the retiral benefits of the applicant including pension, commutation of pension, gratuity, leave encashment etc and

c) Direct the respondents to release all arrears thereto along with interest @ 15% p.a.

d) Award costs of the proceedings; and

e) 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. Learned counsel for the applicant states that the applicant was initially appointed in Department of Posts under the Ministry of Telecommunications as a Junior Engineer (Elec.) in the month of May, 1979. The applicant applied for deputation in the Centre for Development of Telematics (C-DoT) and the said

organisation vide letter dated 19.08.1988 (Annexure - A/2), offered an appointment as Engineer Electrical Maintenance. The respondents, vide their letter dated 10.10.1988 (Annexure - A/3) relieved the applicant to join the office of C-DoT, Chanakyapuri, New Delhi and the applicant joined the duty on the same date (Annexure - A/4). The applicant permanently got absorbed with the said organisation, i.e., C-DoT vide order dated 25.09.1992. The applicant remained in service of C-DoT till 1997 and left the services of C-DoT in the year 1997. The applicant submitted his pension papers vide letter dated 13.01.2009 to the respondents to grant him pension in respect of service rendered with the respondents. Subsequently, the applicant submitted repeated reminders to the respondents on 06.02.2009, 09.03.2009, 07.08.2009, 24.11.2009 and 15.10.2009, which are annexed from Page Nos. 27 to 32 of the present OA. However, the respondents did not respond to the representation/reminders of the applicant. Being aggrieved, the applicant has filed the present OA seeking the aforementioned reliefs.

3. Learned counsel for the applicant states that prior to the applicant's absorption in C-DoT in October, 1992, the applicant has already served 13.5 years in the said department. He further stated that the applicant filed MA No. 1269/2016, seeking condonation of delay of 8170 days in filing the OA. The said MA was allowed and delay was condoned vide Order dated 15.03.2019.

4. Learned counsel for the applicant submits that the applicant has completed 10 years of qualifying service and according to the statutory provisions of Rule 37 of the CCS (Pension) Rules, 1972, the applicant is eligible for getting pension and gratuity. For better appreciation, Rule 37 of the CCS (Pension) Rules, 1972 is reproduced below:-

"37. Pension on absorption in or under a corporation, company or body

(1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him].

EXPLANATION. - Date of absorption shall be –

(i)

in case a Government employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body;

(ii)

in case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government, the date from which his unqualified resignation is accepted by the Government

(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Governments/Union Territory Administrations or under the joint control of two or more State Governments/Union Territory Administrations.

(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive [] retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION. - Body means autonomous body or statutory body.]”

5. In addition, learned counsel refers to Rule 3 'Definitions' clause (o), which states that 'Pension' including Gratuity except when the term pension is used in contradistinction to gratuity, but does not include dearness relief. In view of this, learned counsel for the applicant states that the applicant is entitled to get both the pension and gratuity. He further states that the Govt. of India has taken a decision even the temporary employees are entitled for getting pensionary benefit including gratuity. The Govt. has not drawn distinction between temporary and permanent employees for getting pensionary benefits while rendering qualifying service for less than 10 years in the OM No. 12011/1/2003-Estt. (C) dated 29.09.2003 and the same is reproduced below:-

"(3) Temporary Government servant with less than ten years' service who retires on superannuation, discharged from service, etc., is eligible for gratuity as for permanent Government servant - The Fifth Central Pay Commission in para 133.94 of its report have recommended that the distinction between temporary and permanent Government servant having rendered a qualifying service of less than ten years may be done away with regard to payment of terminal benefits. The above recommendation of the Pay Commission has been considered and it has been decided that a temporary Government servant who retires on superannuation or discharged from service or declared invalid for further service or absorbed in an autonomous body before completing ten years of continuous service shall be eligible to gratuity on the same scale and rates as are applicable to permanent Civil Government servants under the provisions of Central Civil Services (Pension) Rules, 1972.

2. These instructions shall come into force with effect from 1-1-1996. The cases of temporary Government servants decided otherwise, may be reopened and decided as above."

6. Learned counsel for the respondents vehemently opposes the granting of pensionary benefits to the present applicant. He states that the applicant has completed neither 20 years nor 30 years of qualifying service as per Rule 48 and 48A of the CCA (Pension) Rules, 1972. For better appreciation, the same are reproduced below:-

"48. Retirement on completion of 30 years' qualifying service

(1) At any time after a Government servant has completed thirty years' qualifying service-

(a) he may retire from service, or

(b) he may be required by the Appointing Authority to retire in the public interest and in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that-

(a) a Government servant shall give a notice in writing to the Appointing Authority at least three months before the date on which he wishes to retire; and

(b) the Appointing Authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice:

Provided further that where the Government servant giving notice under Clause (a) of the preceding proviso is under suspension, it shall be open to the Appointing Authority to withhold permission to such Government servant to retire under this rule:

Provided further that the provisions of Clause (a) of this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

(i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Minis-tries/Departments.

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(1-A) (a) A Government servant referred to in Clause (a) of the first proviso to sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of less than three months giving reasons therefor.

(b) On receipt of a request under Clause (a), the Appointing Authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, Appointing Authority may relax the

requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.

(3) For the purpose of this rule, the expression 'Appointing Authority' shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires.

48-A. Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to a Government including scientist or technical expert who is-servant,

(i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) Deleted.

(3-A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the

curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the Appointing Authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) Omitted.

(6) This rule shall not apply to a Government servant who-

[(a) retires under the Special Voluntary Retirement Scheme relating to voluntary retirement of surplus employees, or]

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION. For the purpose of this rule, the expression "Appointing Authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement."

7. Learned counsel for the respondents states that the applicant has not completed at least 20 years of qualifying service and he has not taken voluntary retirement from the Department of Telecom. Rather, he has resigned from service in 1992. Referring to the counter affidavit filed by the respondents, in para 4.7, he categorically states that the applicant has resigned from his service from the respondents department in the year 1992. He is not entitled for getting pensionary benefits including gratuity as per Rule 48 and 48A of the said Rules. He further states that the applicant has not been granted technical resignation by the respondent department. The circumstances under which he was not granted technical resignation is not clear. Under such circumstances, he is not entitled to any benefits for the services rendered with his previous department. When there is no technical resignation before absorption in C-DoT, the provisions of Rule 37 do not apply. From the fact that the applicant has approached this Tribunal after a gap of nearly 17 years, it is clear that the applicant was aware that he was not eligible for getting any pension from the respondents. In support of his averments, learned counsel for the respondents submits that the judgment dated 26.07.2024 passed by the Hon'ble Apex Court in Civil Appeal No. 894/2020 titled UP Roadways Retired Officials and Officers Association Vs. State of U.P. & Anr. is applicable in the instant case.

9. Heard the learned counsels for the parties and perused the pleadings available on record.

Analysis

10. It is admitted fact that the applicant remained in service of the respondents till September 1992. It is the claim of the applicant that he was absorbed in C-DOT with effect from October, 1992 (Annexure A-9). The letter dated 25.09.1992 by C-DOT does mention that they have offered the appointment to the applicant as per detailed terms and conditions attached with this letter. The terms and conditions attached with the letter states that the applicant will be on contract for a period of five years. The applicant has stated that he remained in C-DOT till 1997 and thereafter he left for Canada. In other words, he was in C-DOT, an autonomous organization of GOI, on contractual appointment till 1997. The question arises whether, to apply Rule 37 (1) Explanation (i) and 37 (2), the appointment of the applicant can be termed "absorption". Though the explanation under Rule 37(1) explains the date of absorption, it has not explained/defined what would constitute 'absorption', and there is no specific distinction whether it is temporary service or contractual or regular service. Without this clarification we may turn to the dictionary meaning of absorption. The Merriam Dictionary defines "absorption" as "the process of absorbing something or of being absorbed." From this, the nature of absorption of an employee in another organization is not important. Whether the absorption on condition of regular or permanent basis or on contractual basis is immaterial once the employee has severed his service in the parent organisation. It is admitted fact that the employee severed his service with DOT to enable him to join in C-Dot. Hence, he was absorbed in the autonomous organization with effect from October 1992. Accordingly Rules 37 (1) read with 37 (2) are applicable to the applicant. As per these Rules, he is deemed to have retired from the service of DOT with effect from 25.09.1992. As he has completed more than 10 years service in DOT, he is eligible for payment of retirement benefits including gratuity.

11. The averment by the learned counsel for the respondents that Rules 48 and 48 A of the CCS (Pension) Rules, 1972 are applicable in the instant case, is not tenable. These Rules are applicable to cases of voluntary retirement or compulsory retirement. The facts of the case at hand are not relating to VRS or compulsory retirement; it pertains to eligibility of an employee to pension and gratuity after completing 10 years regular service when the employee gets absorbed in an autonomous organization of the government. Similarly, the ratio of judgment of the Apex Court in UP Roadways (supra) is not applicable to the case at hand as the facts and circumstances obtaining in the present case are significantly different than there in the UP Roadways case.

Conclusion

12. In view of the above, the present OA is allowed. The respondents are

directed to release all retirement benefits specifically pension and gratuity applicable as per Rules. This exercise shall be completed within a period of 8 weeks from the date of receipt of certified copy of this order.