

**(2013) 07 DEL CK 0202**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No's. 957, 5555 and 5834 of 2011

Naresh Kumar

APPELLANT

Vs

BSES Rajdhani Power Ltd. <BR> Vijay Kumar Vs BSES  
Rajdhani Power Ltd. and Others <BR> Smt. Jawaitri Vs  
BSES Yamuna Power Ltd. and Others

RESPONDENT

**Date of Decision :** 10-07-2013

**Acts Referred:**

**Citation :** (2013) 10 AD 295 : (2013) 203 DLT 467

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Kittu Bajaj, for the Appellant; Sandeep Sethi Mr. Anupam Varma and Mr. Nikhil Sharma, for R-1, Mr. Sanjeev Sabharwal, for R-2 and Mr. Sumeet Pushkarna, for R-3 in WP(C) No. 5555, 5834, 5841 and 7328/2011, for the Respondent

**Final Decision :** Allowed

## Judgement

Valmiki J Mehta, J.

W.P.(C) No. 957/2011

1. This writ petition is filed by the petitioner Sh. Naresh Kumar who was the erstwhile employee of Delhi Vidyut Board (DVB) and after unbundling of DVB, he became the employee of respondent no. 1-BSES Rajdhani Power Ltd. By this writ petition, petitioner claims terminal benefit of pension. The qualifying service for grant of pension is 20 years under Rule 48 A of the CCS (Pension) Rules, 1972, however, petitioner relies upon Rule 48-B to add 5 years to the service which has been actually rendered by the petitioner. Petitioner has worked for about 19 years and two months, and petitioner states that to this period, five years should be added as per Rule 48-B of the CCS (Pension) Rules.

2. I have had an occasion to consider this aspect in a recent judgment in the case of Smt. Pawan Vohra Vs. The Chairman, DVB Pension Trust and Anr. being

WP(C) 1680/2012 decided on 17.5.2013. In this judgment, relying upon the Division Bench judgment of this Court in the case of Retd. Major A.S. Dahiya E.C. No. 59676 Vs. Union of India (UOI) and Others, I have held that an employee is entitled to addition of five years of service to the actual service performed for claiming of pension. It may be noted that provision of Rule 48-B is as of today no longer on the statute book however, at the relevant point of time when the petitioner retired, this Rule was undoubtedly applicable as per the position which has emerged on record.

3. I am bound by the ratio in the case of Smt. Pawan Vohra (supra), and adopting the ratio in the case of Smt. Pawan Vohra (supra), petitioner will be entitled to add five years of service by virtue of Rule 48-B of the CCS (Pension) Rules to his actual service of 19 years and 2 months. Petitioner will therefore cross the requirement of qualifying years service being 20 years because petitioner would have to be held in service for 24 years and 2 months, whereby the petitioner becomes entitled to pension. The relevant paras of the judgment of Smt. Pawan Vohra (supra) are paras 1 to 5 and which read as under:-

1. This writ petition is filed by the petitioner-Smt. Pawan Vohra, an employee of erstwhile Delhi Vidyut Board (DVB) and thereafter of the successor M/s. BSES Rajdhani Power Limited/respondent No. 2/DISCOM. Petitioner took voluntary retirement in terms of Special Voluntary Retirement Scheme (SVRS), 2003 introduced by the respondent No. 2.

2. There are two issues which arise in this writ petition. First is whether the petitioner has the necessary qualifying service so as to get the pension in terms of Rule 48-A of the CCS (Pension) Rules, and which admittedly applies to the parties by virtue of the Tripartite Agreement entered into between the DVB, Government of NCT of Delhi and the DISCOM. The second issue is that if the petitioner is entitled to pension payment, which is the entity which will bear the liability i.e. whether the DISCOM/respondent No. 2 or the pension trust/respondent No. 1.

3. Let me at the outset reproduce the relevant pension rules namely Rules 48-A, 48-B and 49. For the completion of narration I may state that though Rule 48-B as of date stands deleted, however, at the relevant point of time it was applicable. Therefore, vested rights which existed in favour of the petitioner by virtue of this applicable Rule 48-B, cannot be taken away by the subsequent deletion of said Rule 48-B. These aforesaid rules read as under:-

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 servant, including scientist or technical expert who is -

- (i) on assignments under the Indian Technical and Economic Cooperation (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) The pension and [retirement gratuity] of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

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

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in an

autonomous body of 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.

#### Rule 48-B. Addition to qualifying service on voluntary retirement

(1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48(1)(a) or Rule 48-A of Clause (k) of Rule 56 of the Fundamental Rules of Clause (i) of Article 459 of the Civil Service Regulations, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(2) The weightage of five years under sub-rule (1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48(1)(b) or FR 56(j).

#### Rule 49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.];

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than [Rupee three hundred and seventy-five] per mensem;

(c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

(5) & (6) Deleted.

4. It is not an issue that the petitioner had completed service of 19 years, 10 months and 20 days. As per Rule 48-A, the entitlement to voluntary retirement comes into effect after 20 years of service and the petitioner has not served for 20 years. The issue is that can the provisions of Rule 48-B and 49(3) help the petitioner. In my opinion, the provision of Rule 49(3) is absolutely clear for being read in favour of the petitioner. This provision specifically states that for calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed half-year and reckoned accordingly for qualifying service. Since the petitioner has completed more than 19 years and 3 months of service, by virtue of Rule 49(3) the position will be that the petitioner will be taken to have completed 20 years of service. Once petitioner is held to have completed 20 years of service the petitioner will have the qualifying service of 20 years to bring into application entitlement of voluntary retirement in terms of Rule 48-A. I therefore hold that the petitioner had completed qualifying service of 20 years and was entitled to voluntary retirement in terms of Rule 48-A. I may at this stage add that it is not disputed before me that on completion of qualifying service of 20 years, pension liability will accrue in terms of SVRS 2003. Accordingly, for the aforesaid reasons and conclusions I hold that the petitioner will be entitled to benefits of pension under SVRS 2003 and it is not open to the respondent No. 2 to contend that the petitioner has not completed 20 years of service as required under Rule 48-A.

5. Another reason for me to hold that 20 years of qualifying service stand completed is because of the provision of Rule 48-B. The provision of Rule 48-B has been interpreted by a Division Bench of this Court in the case of Retd. Major A.S. Dahiya E.C. No. 59676 Vs. Union of India (UOI) and Others, . The Division Bench has held in this judgment that for determining the qualifying service, benefit of Rule 48-B has to be given by adding of five years of service to the normal period of service. Accordingly, following the ratio in the case of A.S. Dahiya (supra) for this second additional reason also, I hold that the petitioner would have completed 20 years of qualifying service for being entitled to voluntary retirement in terms of Rule 48-A.

4. Though learned senior counsel for the respondent no. 1/BSES sought to argue that the view taken by this Court is not correct, however, I am bound by my earlier judgment on the principle that a learned Single Judge of this Court is bound by all other earlier judgments of Single Judges. If a different view has to be taken, it can only be taken by a higher Court.

5. Learned senior counsel for respondent no. 1 places reliance on two judgments. First judgment is in the case of C. Jacob Vs. Director of Geology and Mining

Indus. Est. and Another, and the second judgment is Union of India (UOI) and Others Vs. Madhu E.V. and Another, . I have perused both these judgments. None of these judgments directly deal with the provision of Rule 48-B of the CCS (Pension) Rules. The contention of the learned senior counsel for the respondent no. 1 was that there is a difference between entitlement to pension and calculation of the amount of pension. What was argued was that if the petitioner is not entitled to pension, the issue of calculation does not arise. In my opinion, reliance which is placed on the judgments of the Supreme Court as referred to above is misplaced because the issue of qualifying service is necessarily linked to Rule 48-B, and if Rule 48-B applies, and which is so stated by the Division Bench in the case of Retd. Major A.S. Dahiya (supra) which I have relied upon in the case of Smt. Pawan Vohra (supra), petitioner will be entitled to add service of 5 years in terms of Rule 48-B of the CCS (Pension) Rules. There is no discussion in any of the judgments relied upon on behalf of respondent no. 1/BSES specifically pertaining to Rule 48-B, and hence there is no reason why benefit of Rule 48-B cannot be given in the facts of the present case.

6. I may also note that the issue with respect to whether it is the respondent no. 1 or the Government of Delhi or the Trust which is liable is also otherwise decided by me in the case of Smt. Pawan Vohra (supra) and whereafter referring to the earlier judgment of a learned Single Judge of this Court in the case of North Delhi Power Ltd. Vs. Govt. of NCT of Delhi, and that very Single Judge's subsequent judgment dated 20.4.2011, I have held that it is the DISCOMS, such as respondent no. 1 in this case, which is liable to make payment of the terminal benefits and the liability towards terminal benefits cannot be avoided by the private DISCOMS such as respondent no. 1. In view of the above, the writ petition is allowed and the respondent no. 1 is directed to make payment of pension to the petitioner w.e.f. 1.1.2004 and continue to pay the same every month to the petitioner in accordance with law. The arrears of pension be paid within one month. If arrears are not paid within one month from today, then interest will be payable at 9% per annum simple from 1.1.2004 till date and for a period of 30 days from today. If the arrears due are not paid within three months from today, thereafter the rate of interest will be payable at 12% per annum simple. Parties are left to bear their own costs.

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The issue in these cases is identical to the issue decided above, though the period of actual service is different, however, on application of Rule 48-B and the ratio of the judgment in the case of Smt. Pawan Vohra (supra), petitioners in these cases will have crossed 20 years of qualifying service. Accordingly, these writ petitions are also allowed and petitioners are directed to be given pension by the respondent no. 1(BSES Rajdhani Power Limited or BSES Yamuna Power Limited as the case may be). The arrears of pension be paid within one month. If arrears are not paid within one month from today, then interest will be payable at 9% per annum simple from 1.1.2004 till date and for a period of 30 days from

today. If the arrears due are not paid within three months from today, thereafter the rate of interest will be payable at 12% per annum simple. Parties are left to bear their own costs. All pending applications stand disposed of accordingly.