
(2018) 10 CAT CK 0061

In the Central Administrative Tribunal

Case No : Original Application No. 1216 Of 2016

Pramod Kumar Pandey

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 15-10-2018

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 41(2), 49, 69(2)(a)
Central Civil Services (Pension) Rules, 1972 — Rule 49(2)
Indian Railway Establishment Code, Volume-II 1987 — Rule 1303(i)

Citation : (2018) 10 CAT CK 0061

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : A.K.Trivedi, Rahul Pandey, Shailendra Tiwari

Final Decision : Partly Allowed

Judgement

1. Heard Sh. A.K.Trivedi, learned counsel for applicant and Sh. Rahul Pandey, learned counsel for respondents No.1 & 2 and Sh. Shailendra Tiwari, learned counsel for respondent No.3.

2. The applicant brought out that he has joined respondents - Railway as a Design Assistant on 09.10.1990. Applicant was posted to Construction Wing where he was given a pay which was a little higher than his substantial pay as an incentive for working in construction. Thereafter, on completion of about 14 years of service, he had resigned on 01.12.2004 from the Railway and joined a Public Sector Undertaking (PSU), namely, Rail India Technical and Economic Service Limited (RITES) which is under the administrative control of Railways. The applicant brought out that Railways had initially refused payment of any pension with respect to his services already rendered. This grievance was ventilated in OA No.356/2008 in the Tribunal which was disposed off on 14.08.2008 with the following directions:

"In the result, for the foregoing reasons, this OA stands disposed of with a direction to respondents to refer the claim of applicant, on undue hardship, to

the Railway Board for dispensing with the requirements of Rule 41 (2) and thereafter to count, on approval, the erstwhile service of applicant for pro rata pension. In such an event, he shall be entitled to all consequences in law."

3. This was challenged by the respondents in Hon'ble High Court of Delhi vide WP (C) No.742/2009 which was dismissed vide judgment dated 29.09.2010 with the following directions:

"Taking all these facts into consideration, we have no hesitation in holding that in the present case, once the resignation of the respondent (applicant in present case) was accepted and he was allowed to work in RITES Ltd. by the petitioners (respondents in present case), the question of forfeiting his earlier service in the Northern Railway does not arise as the government itself has liberalized joining of an employee in the Government in a PSU even if he joins such service of his own volition and even though such services may not be in the public interest so as to protect his interest for pro rata pension for his past services subject to the condition that he had to his credit qualified service i.e. service of more than 10 years which in this case the respondent (applicant in present case) had before joining RITES Ltd."

Thus, payment of pension for services rendered in Railway was upheld.

4. The applicant brought out that at the time of leaving Railways on 01.12.2004, his basic pay was Rs.8300/- in Railway Construction Organisation, whereas respondent-Railway fixed his pension taking his basic pay to be Rs.7500/- p.m. This was to the detriment of the applicant and respondent-Railway had not issued him any show cause notice for this reduction and hence applicant was unable to bring out his representation. This was accordingly again challenged before the Tribunal in OA No.3799/2013 which was decided on 04.03.2015.

5. While pleading for this OA No.3799/2013, applicant had cited a decision by Hon'ble High Court of Delhi passed in WP (C) No.1474/2003 wherein it was observed that:

"3. The case of the petitioner is that the respondent who retired as Assistant Engineer from the Northern Railway on 30th June, 2001 before the CAT was that his pay was refined and reduced from his existing pay of Rs.10,100/- to Rs.8,100/- with consequent reduction in fixation of pay in higher grades, reduction of his pension as well as recovery from the gratuity paid to him by letters dated 20.3.2001, 4.6.2001, 23.5.2001 and 1.8.2001. The principle grievance of the respondent is that this reduction was done without any notice to him and was thus in complete violation of principles of natural justice. The respondent made this averment in Paragraph 1 of the O.A. preferred by him in the Tribunal. The relevant averment in the O.A. is as follows:

Vide impugned order dated 20.3.2001 (A-1), applicant's pay has been reduced behind his back unilaterally and without putting a notice on him before refining/reducing his basic pay from Rs.10100/- to Rs.8100/- p.m.

Consequently his pay in higher grades Rs.7450-11500 and 7500-12000 have been fixed less and the applicant has been paid less pension, commutation, leave encashment and gratuity etc., on his retirement."

This Tribunal in OA No.3799/2013, gave the following judgment on 04.03.2015:

"Being bound by the aforementioned view taken by the Hon'ble High Court of Delhi, I dispose of the OA with direction to the respondents to re-fix the pension of the applicant after putting him to Show Cause Notice and considering his response thereto, within eight weeks from today. While doing so, they will keep in view the aforementioned judgment of the High Court of Delhi. No costs."

6. In compliance thereof, the applicant had submitted a representation to the respondents. Respondents, in turn had passed a speaking order dated 17.11.2015 wherein the respondents had reiterated their decision for fixing pension based on substantive pay of Rs.7500/- p.m. and not on the officiating pay of Rs.8300/-p.m. which he was drawing while working in Construction Wing of Railway and thus the claim of the applicant has been rejected. This is the impugned order being challenged in the instant OA.

7. In support of his contention that pension needs to be fixed on the officiating pay, the applicant drew attention to a decision in OA No.431/2011 delivered on 06.01.2012 by the Ernakulam Bench of this Tribunal. The applicant pleaded that in this case it was decided that the pension shall be fixed on the officiating pay on the date of superannuation. It was claimed that this ratio is applicable to the instant applicant also and accordingly, he claimed the same benefit.

8. It was also pleaded that vide RBE No.85/2011 dated 09.06.2011 Railway had also decided that pension is to be fixed based on officiating pay. It was brought out that this circular specified as under:

"that the basic pay drawn by an employee on adhoc promotion in the Construction Organisations shall be reckoned as pay in terms of clause (i) of Rule 1303 [(F.R.9)(21)(a)(i)] of Indian Railways Establishment Code Vol.-II/1987 Edition for the purpose of reckoning of emoluments in terms of Rule 49 of the Railway Services (Pension) Rules, 1993. Consequently, the instructions contained in this office letter of even number dated 19.8.2010 may be treated as withdrawn. Cases decided prior to 19.8.2010 need not be reopened."

The applicant also pleaded that the proviso "cases decided prior to 19.08.2010 need not be reopened", in this letter dated 09.06.2011, cannot be applied in his case since his pension was decided only later after decision by Hon'ble High Court dated 29.09.2010 (para 3 supra).

9. The applicant further brought out that pension was paid by the Railway after a lot of delay and as such he is also entitled for interest also for the delayed period and in support of such claim for interest, he cited the following judgments of Hon'ble Apex Court:

(i) S.K.Dua vs. State of Haryana and another, (2008) 3 SCC 44 by Hon'ble Supreme Court

(ii) State of Kerala and ors. vs. N.Padmanabhan Nair, 1985 SCC (1) 429 by Hon'ble Supreme Court

(iii) A.J.Randhawa Supdg. Engineer... vs. State of Punjab and ors., (1997) 117 PLR 6 by Hon'ble Punjab & Haryana High Court.

10. The respondents brought out that in the instant case the applicant had applied for absorption in RITES at his own volition and even the application was not forwarded through proper channel. Accordingly, after his selection, he had resigned from the Railway which is very distinct from retirement, superannuation or technical resignation. In support of this, the respondents drew attention to a letter dated 15.03.2007 written by the applicant himself and addressed to the Chief Personnel Officer/Industrial Relation, Northern Railway, Baroda House, New Delhi. The relevant para of this letter is reproduced below:

"I was not fulfilling all the conditions for above post mentioned in the advertisement; hence I was not sure that my candidature will be considered for interview by RITES Ltd. This was the only reason for not applying through proper channel by me, yet my resignation was properly forwarded by the administration at Kashmere Gate and was properly accepted by the competent authority i.e. CE/P&D, Baroda House. My resignation with a view of join RITES Ltd. has got approval of CAO/P&P. In this way I have joined RITES Ltd. following proper channel and with proper permission of the administration."

Accordingly, the pensionary benefits were denied being not permissible under the extant rules. This was in turn advised to the applicant also vide respondents letter dated 27.06.2007 which has also been annexed as Annexure RA-3 by the applicant alongwith his rejoinder to the counter filed by respondents no.1 & 2. The relevant portion of this letter dated 27.06.2007 is reproduced below:

"The case of Sh. P.K.Pandey, Manager/Civil/Design has been examined. He has himself given in writing that he did not apply through proper channel in RITES because he was not fulfilling all the conditions. He was also not sure that his candidature will be considered for interview by RITES Ltd. He was also not given N.O.C. at the time of his interview, because he had not applied through proper channel. In terms of instruction contained in P.S. No.8994, he is not eligible for any pensionary benefits as per extent rules."

11. The respondents thus pleaded that since the instant case was not that of retirement, voluntary retirement, superannuation or technical resignation but that of resignation itself, hence applicant was not entitled for any pensionary benefits. However, the same were granted to him subsequently in compliance of directions given by the Tribunal in OA No.356/2008 which were upheld by the Hon'ble High Court in WP (C) No.742/2009 as mentioned in para 2 & 3 above.

12. The respondents further brought out that the delay in payment of retiral dues

from 01.12.2004 to 09.02.2012 has happened as the applicant did not apply through proper channel and in case of resignation, the retiral dues were not payable. They had subsequently been paid in compliance to the directions by the Hon'ble High Court. However, the applicable date for such payment was 01.12.2004. Accordingly the instructions as were in force on 01.12.2004, were to be applied wherein pension was to be decided was based upon substantive salary. This has since been indicated also in a speaking form in the order dated 17.11.2015 which has now been challenged in the instant OA and applicant is seeking pension based on officiating pay. This is not permissible.

The respondents also mentioned that the applicable instructions as of 01.04.2004 were in force since long and they were reiterated vide Ministry of Railway letter no. RBE 124/2010 issued on 19.08.2010.

13. The applicant, however, mentioned that since he had joined a PSU under Ministry of Railway, his resignation was in the nature of technical resignation only and thus he was entitled for pension as is permissible under the relevant Pension Rules of the Railways. In support of this claim, the relevant Rule 49 (2) of CCS (Pension) Rules is reproduced below:

"(2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing the qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of three thousand and five hundred rupees per mensem and a maximum of forty-five thousand rupees per mensem."

It was also brought out that this rule is in force since 1988. The applicant further brought out Rule 69 (2) (a) from Railway Pension Rules is as under:

"(2) (a) In the case of a railway 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 rupees [four thousand five hundred per mensem;]"

Accordingly, the applicant pleads that he had completed about 14 years of service and pension was permissible with even 10 years of qualifying service, therefore, pension was due to him. Since this was denied, he had to approach the Tribunal whereafter pension was paid and thus for the delay period, interest is also admissible.

Moreover, by the time pension was sanctioned, the policy directive dated 19.08.2010, quoted by respondents (para 12 supra), was already withdrawn vide another directive RBE No.85/2011 dated 09.06.2011, according to which pension is to be fixed as per officiating pay for those superannuating from Construction Wing (para 8 supra). Also, the ratio that pension needs to be worked out as per his officiating salary in the Construction Organisation, was upheld by Hon'ble

High Court in WP (C) No.1474/2003 which was quoted by the Tribunal in OA No.3799/2013 filed by the applicant (para 5 supra).

14. Matter has been heard at length. The instant case of applicant is that of a Railway employee who had served the parent organisation for about 14 years and at the time of tendering his resignation for joining RITES, he was working in Construction Organisation of Railways where his officiating pay was Rs.8300/- p.m. whereas his substantive pay was Rs.7500/- p.m. It is admitted that applicant had not applied through proper channel, since he was doubtful whether his application would be accepted at all by RITES. It was only after his application was accepted by RITES, that he had tendered resignation from the Railway. This was in the nature of technical resignation only and accordingly, the Tribunal in OA No.3799/2013 had already ordered for fixation of pension after giving the opportunity to the applicant to ventilate his grievance in respect of the pay on which pension is to be fixed.

In this regard the only question that remains now is whether his pension is to be fixed as per officiating pay of Rs.8300/- or substantive pay of Rs.7500/-.

The decisions quoted by the applicant in WP (C) 1474/2003 (para 5 supra) and dated 09.06.2011 (para 13 supra), are in respect of those employees who had retired from Construction Organisation on attaining the age of superannuation, i.e., 60 years. The applicant had resigned after about 14 years of service and took absorption in RITES. Therefore, no parallel can be drawn in instant case with respect to those cases.

The applicant has also pleaded that Railway Board circular of 09.07.2011 is applicable in his case, wherein it had been laid down that pension shall be fixed based upon officiating pay as it was this instruction which was in force when his pension was actually fixed. The applicant has also pleaded that the directions contained in Railways' letter dated 09.06.2011 to the effect "cases decided prior to 19.08.2010 need not be reopened", is not applicable in his case as his pension was not decided before 19.08.2010.

The contention of applicant cannot be accepted as in the instant case, the applicable date of resignation is 01.12.2004 and the instructions in force on that day need to be implemented.

These contentions are also not acceptable in view of Ernakulam Bench of this Tribunal (OA No.431 of 2011 delivered on 06.01.2012) wherein following observations were made:

"8. By the above said letter what has been clarified is that in so far as the restriction contained in the Board's earlier letter dated 13-03-1972, the same would not apply to the ad hoc promotions granted to those functioning in the Construction Wing. It could be seen from para 4 of the reply that the respondents have relied upon the earlier letter dated 13-03-1972 of the Railway Board. The stipulation in the letter dated 19-08-2010 was also made with a view

to be in tandem with the aforesaid letter of 13-03-1972. The applicant superannuated in January, 2010 and at that time the letter dated 19-08-2010 did not come into existence. Fixation of pension in his case was, thus, based on 13-03-1972 order which had been held to be not applicable to construction wing employees, vide para 2 of the said Railway Board letter dated 09-06-2011. Thus, the applicant is entitled to the benefit of the Railway Board letter dated 09-06-2011. The only question is whether the stipulation that cases decided prior to 19-08-2010 be not reopened applies to the case of the applicant. The applicant has challenged the action on the part of the respondents in not treating his pay drawn in the construction wing for the purpose of reckoning his entitlement to pension well before the issue of the Railway Board letter dated 09-06-2011. His lawyer notice preceding the date of filing of the OA clearly meant that the applicant did not accept the pension sanctioned to him without protest. Again, the dated 19-08-2010 cannot be held to sacrosanct to discriminate the applicant from others in so far as pension is concerned. It would be curious to note that the Board's letter dated 09-06-2011 states that cases decided prior to 19-08-2010 need not be reopened. Assuming that on the same date i.e. 31-01-2010 which is the date of superannuation of the applicant one more individual like the applicant retired and there being some delay in finalization of the pension, say, on administrative grounds or otherwise, his case came to be decided posterior to 19-08-2010. In that event, his pension would be more than that of the applicant. If so, would it not mean that the extent of pension admissible to a person depends not on the date of his superannuation or the services rendered or pay drawn but upon the vagaries of the department in finalization of his pensionary benefits? Should such a situation be permitted which would directly infringe upon the equality clause enshrined in Fundamental Rights of the Constitution? Certainly not. It is understandable if there be any such cut-off dates on the basis of date of superannuation, which date is prescribed in the statute; but certainly not on the basis of the date of finalization of the case which depends upon the efficiency/lethargy of the officials concerned."

The applicant had also pleaded that this Ernakulam Bench judgment had also supported fixation of pension on the basis of officiating pay and is applicable in his case. However, this is also not acceptable as the observation by Ernakulam Bench is also in context of superannuation, which is not the case of instant OA.

Accordingly, pension fixation based upon substantive pay of Rs.7500/- p.m. is upheld.

15. With regard to delay, it is held that the applicant admitted that he had not applied through proper channel. It was only subsequent to his selection in RITES that he had tendered his resignation from the Railway. Certain discipline is required to be maintained by the employees as well as it needs to be enforced by the employing organisation. As such, sending application without keeping the employing organisation informed, cannot be accepted. Therefore, for non-grant of pension and consequent delays, the applicant is also held responsible.

However, pension was subsequently granted by judicial intervention and thus it was taken that pension was actually due when resignation came into effect on 01.12.2004. Therefore, the applicant was denied use of money for the delay period and it is legitimate that he be compensated for this delay even though delay period may have to be appropriately allocated to the applicant and respondent. In the event, the respondents are directed to pay interest at GPF rate of interest, for half the period of this delay from 01.12.2004 till actual date of payment, within eight weeks of receipt of these orders.

16. In view of foregoing, OA is partially allowed as above. No order as to costs.