
(2006) 07 DEL CK 0092

In the Delhi High Court

Case No : Writ Petition (C) 10974 of 2006

Raj Pal Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26, 3, 3(2), 30, 37

Citation : (2007) 3 SLJ 492

Hon'ble Judges : Manmohan Sarin, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner is aggrieved by the order of the Tribunal dated 28th March, 2006 by which O.A. 1670/2005 had been dismissed. The controversy may be succinctly stated. Petitioner seeks to have the additional benefit of his past service for the period from 1.3.1979 to 19.1.1982 as a Legal Assistant in the Office of Official Liquidator, High Court of Andhra Pradesh, Hyderabad in the Ministry of Law, Justice and Company Affairs, as petitioner had enjoyed the addition of 5 years as qualifying service in terms of Rule 30 of the CCS (Pension) Rules, 1972.

2. The facts relevant for the disposal of the writ petition may be briefly noted:

Petitioner joined as a Legal Assistant in the Office of Official Liquidator, High Court of Andhra Pradesh, Hyderabad. He applied for being appointed as Public Prosecutor in CBI and was selected through U.P.S.C. and was posted as a Public Prosecutor on 22.1.1982. He became Senior Public Prosecutor on 5.1.1988, Deputy Legal Advisor on 21.9.1998 and Addl. Legal Advisor on 10.3.2004. Petitioner superannuated on 31st July, 2005. Petitioner has been given the benefit of adding qualifying service in special circumstances in terms of Rule 30 whereby he has had the benefit of five years added service for the purpose of

computation of pension. Petitioner additionally seeks that benefit of past service for the period from 1.3.1979 to 19.1.1982 be also given to him. It would be appropriate at this stage to reproduce the relevant provisions for facility of reference which were duly extracted in the impugned judgment:

Rule 3(q);

"Qualifying Service" means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules.

13. Commencement of qualifying service-

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post of which he is first, appointed either substantively or in an officiating or temporary capacity:

Provided that officiating temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that-

(a) in the case of a Government servant in a Group "D" service or post "which held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.

26. Forfeiture of service on resignation:

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under Sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condensation to the extent to which the period is not covered by leave due to him.

(4) The Appointing Authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:

(i) that the resignation was tendered by the Government servant for some

compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation,

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper,

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days,

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the Appointing Authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the Appointing Authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condensation of interruption in service but the period of interruption shall not count as qualifying service.

(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government.

30. Addition to qualifying service in special circumstances:

(1) A Government servant who retires from a service or post after the 31st March, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of persons) the actual period not exceeding one-fourth of the light of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the service or post to which the Government servant is appointed is one-

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-five years of age are normally recruited:

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is

not less than ten years:

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule:

Provided also that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this sub-rule foregoing the counting of the past service.

(2) A Government servant who is recruited at the age of thirty-five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in Sub-rule (2) once exercised shall be final.

3. We have heard Ms. Jyoti Singh who appears for the respondents in opposition to the writ petition. She relies on the second proviso to Rule 30 as quoted above and underlined.

4. Based on the above, Ms. Jyoti Singh submits that petitioner having availed the benefit of qualifying service, cannot claim to have in addition the benefit of past service in terms of Rule 26 as the proviso provides for its exclusion if benefit of past service is availed.

5. Petitioner, who appears in person, questions this by saying that the above proviso was added by an amendment in the year 1992 and it Therefore cannot alter the terms and conditions of the petitioner's employment to his prejudice since he joined the services prior to 1992. This plea was also raised before the Tribunal. The Tribunal rightly concluded that this was an amendment in the statutory rules and no doubt comes into effect prospectively. Petitioner who retired subsequent to the amendment in 1992 is, Therefore, governed by the amendment to the statutory rules and it is not open for him to urge that there cannot be any amendment in the statutory rules. Evolution of law is an ongoing dynamic process. It cannot remain static.

6. Besides, there is rationale for the said provision. An employee can claim benefit of either past service or qualifying service. Petitioner had been granted the benefit of additional qualifying service in the special circumstances as laid down in Rule 30. He also raised the plea that certain other individuals had been given the benefit of both the provisions. The Tribunal has duly dealt with those cases and rightly distinguished them on facts. We find no ground to interfere with the well reasoned judgment of the Tribunal. Dismissed.