

(2022) 07 DEL CK 0042

In the Delhi High Court

Case No : Civil Writ Petition No. 7438 Of 2010

S P Parasher

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 12-07-2022

Acts Referred:

Citation : (2022) 07 DEL CK 0042

Hon'ble Judges : Satish Chandra Sharma, CJ;Subramonium Prasad, J

Bench : Division Bench

Advocate : Sushant Kumar, Rajesh Gogna, Arun Sanwal

Final Decision : Dismissed

Judgement

Satish Chandra Sharma, CJ

1. The present Writ Petition is arising out of order dated 19.02.2010 passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A. No. 1068/ 2007 dismissing the Original Application filed by the petitioner.

2. The facts of the case reveal that the petitioner came into service on 01.02.1980 as Junior Steno-cum-VTO in the pay scale of Rs. 330-550/- (pre-revised) under the Council of Scientific and Industrial Research (CSIR), and he was appointed in the Indian Scientific Documentation Centre, (INSDOC), New Delhi. He was confirmed on 18.02.1981 and was promoted to the post of Senior Stenographer in the pay scale of Rs.425-800/- (pre-revised) with effect from 05.12.1983. The petitioner was later on sent on deputation in the office of Project Director, District Rehabilitation Centre Scheme (DRC), Ministry of Welfare (now known as Ministry of Social Justice & Empowerment) on the post of Sr. P.A. (PS) with effect from 26.04.1988 in the pay scale of 200-3500/-. The period of deputation was extended and finally the lien in the parent organisation i.e. INSDOC came to an end on 27.04.1992. He was absorbed in the Services of DRC.

3. The most important aspect of the case is that the earlier service of the

petitioner under the INSDOC was pensionable services and the service under the DRC was not at all pensionable service. The petitioner became a member of the Contributory Provident Fund (CPF) from April, 1992 and the Project of DRC also contributed towards the Employees Contribution in respect of the petitioner.

4. The petitioner, again on deputation, joined the services under the Rehabilitation Council of India (RCI) on 15.06.1998 as Private Secretary in the pay scale of 6500-10500/-, and was later on absorbed in the services of the RCI in the pay scale of 6500-10500/-. The petitioner came up before the CAT stating that he came into service on 01.02.1980, and he has served the respondents up to 07.12.1998, however, while granting the pensionary benefits and upgradation under the Assured Career Progression (ACP) Scheme (ACP), he has not been granted the benefit of past services rendered by him with effect from 01.02.1980. The petitioner in those circumstances prayed for the following reliefs:

“(a) Quash and set-aside the impugned orders dated 27.5.2005, 24.8.2005, 24.4.2006 & 27.6.2006 passed by District Rehabilitation Centre Scheme (Respondent No.2) and Ministry of Social Justice & Empowerment (Respondent No.1) respectively.

(b) Direct the Respondent No.1 & 2 to treat the services of the Applicant with Respondent No.2 w.e.f 26.4.1988 to 6.12.1988 as valid government regular service and further direct the respondents to grant all the consequential benefits, namely counting of past services for the purpose of pensionary benefits (at the time of recruitment), fixing of seniority & grant of financial upgradation under the Assured Career Progression Scheme as applicable to the employees of Respondent No.2 & 4.

(c) Direct the Respondents No.1 & 2 to pay upto date interest, if any, on the past service benefits of INSDOC and DRC to enable the Respondent No.4 to count the service rendered by the Applicant with Respondent No.2 and 3 as pensionable in terms of Order No.6 (1) to Appx. 11 to CCS (Pension) Rules, 1972.

(d) Direct the Respondent No.1 to fix the seniority of the Applicant (with Respondent No.4) w.e.f. 26.4.1988, the date from which the Applicant has been holding the same post in the same pay scale and make eligible for all consequential benefits.

(e) Any other relief which this Hon’ble Tribunal may be pleased to grant under the facts and circumstances of the case.”

5. The CAT has partly allowed the Original Application by holding that the petitioner’s services under the DRC cannot be treated as Government Service for all purposes and the period cannot be counted towards pensionary benefits. The Tribunal has further held that the petitioner shall be entitled for all consequential benefits by taking into account his seniority in RCI from the date he has joined RCI i.e. with effect from 15.06.1998. The operative portion of the order passed by the CAT in paragraph 10,11 and 12 reads as under:

"10. In the backdrop of the service career of the Applicant; the facts already narrated in this order; and the contentions arrived on the 1st and 3rd issues. We now advert to the 2nd issue on ACP. With regard to the ACP scheme, the Applicant has joined the RCI w.e.f. 1998 and prior to that he has not only got promotion but also has got higher scales of pay. Therefore, if at all any ACP would be applicable it would be the second ACP i.e. financial upgradation to the next higher scale after the completion of 24 years of regular service would be applicable since he joined the RCI in 1998. Hence from the date he joined the RCI (15.6.1998) will be the date from which the 24 years would have to be counted by the Respondent No.4 for granting him the 2nd ACP. Taking into account the above facts and circumstances of the case, we come to the considered conclusion that Applicant has not made out a case to get first ACP at all since he has got his promotion in the past and higher scales of pay. He would be entitled to the 2nd ACP only w.e.f. the date he joined RCI (15.06.1998).

11. We also note that Nakkar Case (supra) and Rooplal case (supra) are distinguishable and do not come to the help of the Applicant. Further, we find that in Smt. Nirmala Venkataswaran case the office order was issued on the basis of the directions of the Hon'ble High Court of Madras and the facts of the said case not being presented before us, we cannot take the case as similar to the present case. Hence, all these case, we note, are distinguishable and are not applicable for the current OA.

12. Considering the full facts of the case and the extant Rule position including the ACP Guidelines and the conclusions we have arrived at, on 3 issues, we decide the prayers of the Applicant in the following manner:-

(i) the orders/ letters dated 27.5.2005 (Annexure-A1), 24.4.2006 (Annexure-A3) and 27.6.2006 (Annexure-A4) are legally sustainable.

(ii) the period the Applicant spent in DRC cannot be treated as Government service for all purposes and this period cannot be counted towards his pensionary benefits.

(iii) he is entitled to his seniority in RCI with reference to his present rank and the date from which he got his rank or the date of joining RCI whichever is later.

(iv) the Respondent-1 is directed to issue a comprehensive order on the service matters of the Applicant within a period of three months from today, keeping in view our observations, orders and directions in this OA."

6. Learned counsel for the petitioner has vehemently argued before this Court that the petitioner is entitled for promotion under the ACP Scheme by taking into account the services rendered by him with effect from 01.02.1980 i.e. his initial date of joining and is entitled for upgradation after 12 years and 24 years of service.

7. He has also argued that the petitioner is also entitled for grant of pension by taking into account the qualifying service with effect from 01.02.1980 till

07.12.1998. Learned counsel for the petitioner has placed reliance on the Office Memorandum issued by the DOPT dated 29.08.1984 which deals with various contingencies in respect of employees working with the Central Government/ Autonomous Projects/ Autonomous Bodies and their transfer on deputation in the matter of grant of pension. He has also placed heavy reliance upon the clarification issued by the Government of India, Ministry of Personnel Public Grievances and Pensions dated 09.08.1999 in the matter of grant of upgradation under the ACP Scheme, and his contention is that the petitioner is certainly entitled for taking into account his services with effect from 01.02.1980 for the purpose of grant of upgradation under the ACP Scheme, as well as the petitioner is entitled for grant of pension by taking into account the services rendered with effect from 01.02.1980 to 07.12.1998.

8. Heard learned counsel for the parties at length and perused the record.

9. The undisputed facts of the case reveal that the petitioner before this Court was initially appointed in the Government service on 01.02.1980 as Junior Steno-cum-VTO in the pay scale of Rs. 330-550/- (pre-revised) in INSDOC which is under the CSIR. He was granted promotion and was subsequently sent on deputation with effect from 26.04.1988 in another organization i.e. DRC. This is the second spell of service of the petitioner and the petitioner was again appointed on deputation in the service of RCI with effect from 15.06.1988, meaning thereby he has served in 3 organisations and the service profile of the petitioner in respect of 3 spells of service is detailed as under:

"Spell – I – ISDOC (01.2.1980 to 25.4.1988)

1.2.1980 Applicant joined the pay scale of Rs. 330-10-560 as Junior Stenographer-cum-V.T. Operator in INSDOC (CSIR).

17.10.1983 He was promoted as Senior Stenographer to the higher pay scale of Rs. 425-800.

Spell – II – DRC (26.4.1988 TO 14.6.1998)

26.4.1988 He joined DRC on deputation basis in the pay scale of Rs. 2000-3500 (Pre revised).

27.4.1992 The Applicants lien with INSDOC was cut off.

Spell – III – RCI (15.6.1998 to till date)

15.6.1998 The Applicant joined as Private Secretary in RCI on deputation basis.

7.12.1998 He was absorbed in RCI in the pay scale of Rs.6500-10500."

10. The undisputed facts of the case make it very clear that the first spell of the service of the petitioner was under the Government as INSDOC is a part of CSIR. The petitioner has also received promotions while serving in INSDOC.

11. In respect of second spell of service, he joined the DRC on 26.04.1988, and

he was also absorbed in the services of DRC, meaning thereby that he was no longer employee of the first organization.

12. Thereafter, again, the petitioner was sent on deputation to RCI on 15.06.1988, and continued in the organization upto 07.12.1998. He was absorbed in the services of RCI. The undisputed facts of the case make it very clear that in respect of the first and third spell of service period, his services were pensionable. However, in respect of second spell of service period, his service was not at all pensionable, and CPF benefits were applicable to employees.

13. The Department of Personnel & Training has issued an Office Memorandum dated 29.08.1994 for the purposes of counting of past services for grant of pension and the Office Memorandum is reproduced as under:

"No.28/10/84-Pension Unit

Government of India/ Bharat Sarkar

Ministry of Home Affairs/Grih Mantralaya

Department of Personnel and Administrative Reforms

(Karmik aur Prashasnik Sudhar Vibhag)

New Delhi, the 29th August 1984

OFFICE MEMORANDUM

Subject: Mobility of personnel between Central Government Departments and Autonomous Bodies – Counting of service for pension –

As per existing orders, service rendered outside Central Government does not count for pension in Central Government except in the case of scientific employees of autonomous bodies financed or controlled by the Government, who on permanent absorption under the Central Government are allowed to count their previous service for pension subject to certain conditions. In respect of personnel other than scientific employees, who are permanent in Central Government, in the event of their subsequent permanent absorption in public sector undertakings or any autonomous body, proportionate retirement benefits for the service rendered in Government till the date of permanent absorption are allowed as per rules in force at the time of absorption. No such benefit is allowed to temporary employees going over to autonomous body or undertaking.

2. A number of Central autonomous/statutory bodies have also introduced pension scheme for their employees on the lines of the pension scheme available to the Central Government employees. It has, therefore, been urged by such autonomous/statutory bodies that the service rendered by their employees under the Central Government or other autonomous bodies before joining the autonomous body may be allowed to be counted in combination with service in

the autonomous body, for the purpose of pension, subject to certain conditions. Similar provisions for employees of autonomous body going over to Central Government have also been urged. In other words, the suggestion is that the benefit of pension based on combined service should be introduced.

3. This matter has been considered carefully and the President has now been pleased to decide that the case of Central Government employees going over to a Central autonomous body or vice-versa and employees of the Central autonomous body moving to another Central autonomous body may be regulated as per the following provisions:-

a)(a) In case of Autonomous Bodies where Pension Scheme is in operation.

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the services rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, accrue only if the temporary service is followed by confirmation. If he retires as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employee of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lumpsum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lumpsum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time.

(ii) A Central Government employee with CPF benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest, which will be paid to the concerned autonomous body by the concerned Government Department. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulate period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

(b)(b) Autonomous body where the Pension Scheme is not in operation.

(i) (i) A permanent Central Government employee borne on pensionable establishment, on absorption under such autonomous body will be eligible for pro-rata retirement benefits in accordance with the provisions of the Ministry of

Finance O.M. No.26(18)EV(B)/75 dated the 8th April, 1976, as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the rules would be actually payable to the individual on the date when pro-rata retirement benefits to permanent employees become payable. However, in the case of absorption of a Government employee with CPF benefits, in such an autonomous organisation, the amount of his subscriptions and the Governments' contribution, if any, together with interest thereon shall be transferred to his new Provident Fund account with the consent of that body.

(ii) An employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the autonomous body and start his service afresh in Government or choose to count service rendered in that body as qualifying service for pension in Government by foregoing employer's share of Contributory Provident Fund contributions with interest thereon, which will be paid to the concerned Government Department by the autonomous body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final.

(c) (c) Absorption of employees of one Central Autonomous body to another Central Autonomous body. The above procedure will be followed mutatis mutandis in respect of employees going from one autonomous body to another.

4. "Central autonomous body" means body which is financed wholly or substantially from cess or Central Government grants. "Substantially" means that more than 50% of the expenditure of an autonomous body is met through cess or Central Government grants. Autonomous body includes a Central statutory body or a Central University but does not include a public undertaking.

Only such service which qualifies for pension under the relevant rules of Government/Autonomous body shall be taken into account for this purpose.

5(1). The employees of a Central autonomous body or Central Government, as the case may be, who have already been sanctioned or have received pro-rata retirement benefits or other terminal benefits for their past service will have the option either:-

(a) (a) to retain such benefits and in that event their past service will not qualify for pension under the autonomous body or the Central Government, as the case may be : or

(b) to have the past service counted as qualifying service for pension under the new organisation in which case the pro-rata retirement or other terminal benefits, if already received by them, will have to be deposited alongwith interest thereon from the date of receipt of those benefits till the date of deposit with the autonomous body or the Central Government, as the case may be. The right to

count previous service as qualifying service shall not revive until the whole amount has been refunded. In other cases, where pro-rata retirement benefits have already been sanctioned but have not yet become payable, the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and cancellation of the sanction. The option shall be exercised within a period of one year from the date of issue of those orders. If no option is exercised by such employees within the prescribed time limit, they will be deemed to have opted for retention of the benefit already received by them. The option once exercised shall be final.

5(2). Where no terminal benefits for the previous service have been received, the previous service in such cases will be counted as qualifying service for pension only if the previous employer accepts pension liability for the service in accordance with the principles laid down in this Office Memorandum. In no case pension contribution/liability shall be accepted from the employee concerned.

6 These orders will be applicable only where the transfer of the employee from one organisation to another was/is with the consent of the organisation under which he was serving earlier, including cases where the individual had secured employment directly on his own volition provided he had applied through proper channel/with proper permission of the administrative authority concerned.

7. These orders will take effect from the date of issue and the revised policy as enunciated above will be applicable to those employees who retire from Government/autonomous body service on or after the date of issue of these orders.

The provisions contained in the Ministry of Finance Office Memorandum No.26(18)EV(B)/75 dated the 8th April, 1976 and Office Memorandum No.25(1)EV/83, dated the 8th September 1983 or any other orders shall, in so far as it provides for any of the matters contained in this Office Memorandum, cease to operate.

8. The Ministry of Education and Culture etc. are requested to advise the autonomous/statutory bodies under their administrative control, with specific directions to the Financial Advisers concerned, to ensure to make necessary provisions in their Rules and Regulations/ Articles of Association in accordance with the provisions contained in this Office Memorandum. In cases where any practice otherwise than enumerated above is presently being followed the same may be revised in accordance with the provisions of this Office Memorandum so that uniformity is maintained in such matters in all the organisations.

9. In so far as persons serving in the Indian Audit and Accounts Department are concerned these orders issue after consultation with the Comptroller and Auditor General of India.

Sd/- S.R. AHIR

Deputy Secretary to the Government of India”

14. The aforesaid Office Memorandum makes it very clear that an employee is entitled to exercise the option of either opting for CPF benefit or to continue with the Pension Scheme of the Government, and for the same he has to exercise the option to receive CPF benefits or to continue to receive pensionary benefits, meaning thereby to take into account the period rendered in the earlier organization for payment of pension. The option has to be exercised within one year, and in the present case, the petitioner was absorbed in the services of DRC on 27.04.1992, and he did not exercise his option within the period of one year from the date of absorption and, therefore, he is not entitled to counting of the period with effect from 26.04.1988 to 14.06.1988 for the purposes of computation of qualifying service for grant of pension. The Tribunal was, therefore, justified, keeping in view the Office Memorandum dated 26.04.1988 to hold that the period spent in DRC cannot be treated as Government Service for all purposes and cannot be counted for grant of all pensionary benefits.

15. The second issue involved in the present case is grant of upgradation under the ACP Scheme.

16. The ACP Scheme for the Central Government employees in Ministries/ Departments was introduced based upon recommendation of the 5th Pay Commission and, after introduction of the Scheme, a lot of discrepancies arose in respect of counting of past services. The Scheme was introduced vide notification dated 09.08.1999 and a reference was made in respect of various issues to the Government.

17. The Government of India, Ministry of Personnel Public Grievances and Pensions has issued a clarification in respect of the ACP Scheme on 10.02.2000, and the clarification issued under item Nos. 4,5 and 6 reads as under:

”[Reference:-Office Memorandum No.35034/1/97-Estt(D)(Vol.IV) dated 10.02.2000]

S.

No.

Point of Doubt

Clarification

xxx

xxx

xxx

4.

In a case where a person appointed to a post on transfer (absorption) basis

from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from the initial appointment or otherwise.

The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which

appointment was made by different methods like direct recruitment, absorption (transfer)/ deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/ deputation in the aforesaid situations, promotions earned in the previous/present organizations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay-scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS.

Needless to say, in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within the same organisation, ordered generally for

administrative/personal considerations and the service rendered in the earlier station counts as eligibility service for promotion.

5.

Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?

6.

An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in

the same pay-scale as that of the post held by him in the present cadre? Also, what will be the situation if he was holding a post in the parent cadre carrying a lower pay- scale?

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18. The aforesaid clarification issued by the Government of India in respect of Scheme dated 09.08.1999 makes it very clear that in case of absorption, transfer/ deputation, promotion earned in the previous/ present organization together with past service shall also count for the purposes of ACP Scheme. It also clarifies that, in case, the appointment is made to higher pay scale, either on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/ promotion shall not be counted for the benefits under ACP Scheme.

19. The facts of the case make it very clear that the petitioner has received promotions/ higher pay scales in INSDOC and as well as while serving in DRC. He was appointed at higher pay scale in the services of RCI and, therefore, for the purpose of grant of ACP, services rendered by him with effect from 15.06.1998 has to be taken into account.

20. The Tribunal was certainly justified in holding that the petitioner is entitled for seniority in RCI with reference to his present rank and the date from which he got his rank or the date of joining the RCI, whichever is later.

21. This Court, keeping in view of the above facts and circumstances, does not find a reason to interfere with the order passed by the CAT. The writ petition is, accordingly, dismissed.