
(1983) 05 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 835 of 1983

Satya Narain Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-05-1983

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 37, 49(5)

Citation : (1983) 05 AHC CK 0050

Hon'ble Judges : M.P. Mehrotra, J;B.N. Sapru, J

Bench : Division Bench

Advocate : R.S. Misra and Ram Prakash Misra, for the Appellant;

Final Decision : Disposed Of

Judgement

B.N. Sapru, J.—The Petitioner was employed in the Central Ordnance Depot, Chheoki, Allahabad. He applied for the post of Personal Assistant, in the Indian Telephone Industries Ltd. Naini Unit, Naini, Allahabad, a Government of India undertaking. His application was forwarded by the Commandant, Central Ordnance Depot, Chheoki, Allahabad to the Indian Telephone Industries Ltd. through Sena Ordnance Corps, Abhilekh, Secunderabad. The Petitioner was selected and appointed in the Indian Telephone Industries Ltd. The Petitioner has been working in the Indian Telephone Industries Ltd. since 25-8-1974. He was permanently absorbed in the Indian Telephone Industries Ltd. on 10-6-1976. The Petitioner applied for retirement benefits to the Union of India but he has not been given any retirement benefits. From the counter affidavits filed on behalf of the Respondents, it is apparent that the Union of India is accepting the Petitioner's claim to retirement benefits provided the Indian Telephone Industries Ltd. gives a certificate that the Petitioner was absorbed in its service and his absorption was in the public interest. The Indian Telephone Industries Ltd. in its counter-affidavit has taken the stand that it is not for it to give a certificate that the Petitioner's absorption in the Indian Telephone Industries was in public interest and that such a declaration/certificate has to be given by the

Respondents Nos. 1 and 2, namely the Union of India and the Commandant, Central Ordnance Depot, Chheoki, Allahabad.

2. The matter is covered under Rule 37 of the Civil Service (Pension) Rules, 1972. The Rule 37 runs as follows :

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

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 Government or in or under body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest be deemed to have retired from Service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him.

Provided that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company or body shall be required in respect of a Government servant whom the Government may by order, declare to be a scientific employee.

Provided further that the provisions of Sub-rule (5) of Rule 49, shall not apply for the purposes of determining pension under this rule.

3. The said Rule lays down that where a government servant had been permitted to be absorbed in a service or post in or under a corporation, company or a body wholly or substantially owned or controlled or financed by the Government, the Government servant shall be deemed to have retired from the service from the date of such absorption if the Government gives a declaration that the absorption is in the public interest. The Government is the only authority to give a certificate that the absorption is in the public interest. Further, it is the Government servant who retires from Government service and it is he, who is entitled to retirement benefits. In this view of the matter, the stand of the Government, Respondent No. 1, namely, the Union of India and the Respondent No. 2 namely, the Commandant, Central Ordnance Depot, Chheoki, Allahabad, that they cannot give Government servant the retirement benefits in the absence of the declaration from the Indian Telephone Industries Ltd. that the Petitioner's absorption in the latter company is in public interest, is incorrect.

4. In the result, a writ of mandamus is issued commanding the Respondents Nos. 1 to 3 to give retirement benefits to the Petitioner admissible under Rule 37 of the Civil Service (Pension) Rules 1972 without requiring him to furnish the certificate of the Indian Telephone Industries Ltd. Naini Unit, Naini, Allahabad, that the Petitioner's appointment and absorption in the Indian Telephone Industries Ltd. is in the public interest. It will be open to the Union of India and the Respondent No. 2 to consider whether the Petitioner's absorption in the Indian Telephone Industries Ltd. was in public interest and in arriving at their

decision they will ignore the fact that there is no certificate/declaration from the Indian Telephone Industries Ltd. that the Petitioner's absorption is in public interest. The Respondents Nos. 1 and 2 should decide the matter within a period of three months The Petitioner is entitled to his costs from Respondents Nos. 1 and 2 only.