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(2001) 09 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15216 of 2001

The Union of India and Others — APPELLANT

Vs

I. Satyanarayana — RESPONDENT

Date of Decision : 24-09-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Pension) Rules, 1972 — Rule 3, 39, 40, 49, 49(1)
Constitution of India, 1950 — Article 136, 14

Citation : (2001) 09 AP CK 0045

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : C.V. Ramulu, for the Appellant; B.S.A. Satyanarayana, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—Whether an employee of Government of India in Telecommunications Department after completing service of seven years seven months and eleven days is entitled to claim pension as per Central Civil Services (Pension) Rules, 1972 (hereinafter called ''the Pension Rules'') is the short question that arises for consideration in this Writ Petition which itself is filed against the order dated.8.2.2001 in O.A.No.1628 of 2000 passed by the Central Administrative Tribunal, Hyderabad Bench.

2. The facts are not in dispute. The respondent was appointed as lineman in the Telecommunications Department in 1977. He was placed under suspension with effect from 21.11.1985 in connection with a departmental enquiry into misconduct. The enquiry was conducted and the same resulted in imposition of penalty of compulsory retirement and by order dated.16.6.1990 the punishment of compulsory retirement was imposed. Challenging the same, the respondent filed O.A. u/s 19 of the Administrative Tribunals Act, 1985 (''the Act'' for brevity) which was dismissed. A SLP under Article 136 of the Constitution of India also

met the same fate. The petitioner was also paid his gratuity of Rs.5,902/-. Presumably because he has put in a service of less than ten years he was not paid pension. Therefore, he filed O.A.No.1628 of 2000 contending that he is so entitled for pension as per Rule 40 of the Pension Rules. The same was opposed by the Union of India and others contending that the respondent is not entitled for pension by reason of the fact that he does not have qualifying service for the purpose of claiming the pension and that as per Rule 49(1) of the Pension Rules, pension cannot be paid to the respondent.

3. The learned Tribunal by the impugned judgment allowed the O.A. directing the petitioners herein to pay full compensation pension in three months from the date of receipt of the order with interest at 12% per annum on the amount of compensation payable to the respondent.

4. Rule 40 of the Pension Rules reads as under:

40. Compulsory retirement pension:

(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the President passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the (full compensation pension) admissible under these rules, the Union Public Service Commission shall be consulted before such order is passed.

Explanation:- In this sub-rule, the expression ''pension'' includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or as the case may be, under sub-rule (2) shall not be less than the amount of (Rupees three hundred and seventy-five) per mensem.

5. We may also in this connection extract Rule 49 of the Rules, which is relevant.

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 before 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 rupees 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.

6. Rule 3(q) defines qualifying service as to mean the service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules. The emphasis in Rule 3(q) is ''pension admissible under the Rules'' means that pension subject to minimum service as contemplated under the Rules.

7. Rule 40 permits grant of pension or gratuity at a rate not less than two-thirds and not more than full compensation pension or gratuity admissible to a Government servant on the date of his compulsory retirement subject to condition that any pension granted or awarded under sub-rule (1) shall not be less than rupees three hundred and seventy five per month. Rule 49(1) of the Pension Rules postulates that in the case of Government servants retiring in accordance with the Pension 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 months period of qualifying service whereas in the case of Government servant retiring 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. As per Rule 49(3) of the Pension Rules length of qualifying service has to be calculated by treating fraction of a year equal to three months and above as completed one half year.

8. A reading of Rules 40 and 49(1) together leads to only one conclusion that a person who is retired and/or compulsorily retired before completing qualifying service of ten years, he is entitled to the amount of service gratuity only and not to any pension. A reading of sub-rules (2) and (3) of Rule 49 in contra distinction with Rule 49(1) makes it abundantly clear that a Government servant like the respondent is not entitled to any pension. In recording a conclusion that Rule 49(1) has no application the Tribunal has not adverted to this aspect. The Tribunal proceeded on the ground that Rules 39 and 40 apply. We are afraid we

cannot agree with the same. Rule 39 postulates that if a Government servant is ousted in abolition of his permanent post unless he is appointed to another post, he is entitled to compensation pension to which he may be entitled for the service he has rendered. Rule 39 has no application at all. When a person claims retirement pension on compulsory retirement Rule 40(1) of the Pension Rules has to be applied subject to other Rules like Rule 49(1) in the sense that Rule 40(1) of the Rules enables competent authority to grant (i) pension; (ii) gratuity and (iii) pension and gratuity at a rate not less than two-thirds and not more than full compensation pension or gratuity or both if admissible to a person who is compulsorily retired. The mention of ''full compensation pension'' in Rule 40(1) does not mean that a person who is compulsorily retired is entitled to compensation pension. These words are mentioned therein so as to restrict the amount of pension payable to Government servant who is retired compulsorily subject however to satisfy Rule 49(1) i.e. completing ten years of service. This view is supported by recent judgment of the Supreme Court in UNION OF INDIA v. RAKESH KUMAR1 wherein it was held:

Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules. Rule 13 provides that qualifying service by a government servant commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. This Rule nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is a specific provision that if a government servant retires before completing qualifying service of 10 years because of his attaining the age of compulsory retirement, he would not get pension but would get the amount of service gratuity calculated at the rate of half-month''s emoluments for every completed six-monthly period of qualifying service.

9. It was also held that hardship cannot be a ground for granting pension. The relevant observations are as follows:

Therefore, by erroneous interpretation of the Rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is dehors the statutory rules nor can there be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If the Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but the Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement except in those cases where there are special provisions.

10. In the present case, admittedly the respondent was under suspension from 21.11.1985 till the order of the compulsory retirement was passed and the competent authority specifically admitted the period of suspension shall not be treated as on duty. In view of this, the period of suspension cannot be counted for the purpose of qualifying service and therefore even applying Rule 49(3) of the Rules, the petitioner would be having eight years of service from the date of his appointment till the date of imposition of punishment. In view of this, the respondent is not entitled for pension for mere reason that the appointing authority had taken a lenient view and had imposed compulsory retirement.

11. The submission of the learned counsel for the respondent that it is illogical to deny pension to the respondent especially when the competent authority imposed punishment of compulsory retirement only taking into consideration the entitlement of the respondent for pension. We are afraid we cannot agree with the submission. Whether or not the competent authority adverted to this question the ultimate question remains as observed by the Apex Court in RAKESH KUMAR''S CASE (supra) whether a person has requisite eligible/ qualifying service. Accordingly, no Government servant is entitled to pension unless he satisfies the Pension Rules. As already observed every person whether or not has qualified service has the right to pension only ''as is admissible under the Rules''.

12. For the above reasons, the order of the Tribunal is unsustainable the same having been tainted with error apparent on the face of the record, we set aside the same and allow the Writ Petition. There shall be no order as to costs.