
(2009) 12 UK CK 0047

In the Uttarakhand High Court

Case No : Special Appeal No. 04 of 2005

The Union of India (UOI) and Others

APPELLANT

Vs

O.P. Sharma

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 19(1), 5

Citation : (2009) 12 UK CK 0047

Hon'ble Judges : J.S. Khehar, C.J.;B.C.Kandpal, J

Bench : Division Bench

Advocate : V.B.S. Negi, Asst. Solicitor General, for the Appellant; Pankaj Miglani, for the Respondent

Judgement

J.S. Khehar, C.J.—Respondent O.P. Sharma was originally inducted into the Indian Air Force, whereafter having rendered one year and 143 days" service, he was discharged from service on medical grounds. Subsequently, he came to be employed in civil service on quasi-temporary basis against the post of Civil Telecom Mechanic. This service was in lieu of combatant service. The Respondent O.P. Sharma assumed his duties as Civil Telecom Mechanic on quasi-temporary basis w.e.f. 01.08.1958. During the course of his employment, his status was upgraded as quasi-permanent w.e.f. 01.04.1970.

2. The sole issue which arises for consideration at our hands, is the manner in which Respondent O.P. Sharma's employment came to an end on 26.02.1975. Insofar as the instant issue is concerned, the Appellants have appended herewith (as Annexure No. 4), a communication dated 19.03.1975. In the aforesaid communication (in paragraph 2 thereof), it was, inter alia, recorded as under:

Your resignation has been accepted. You are discharged from service at your own request with effect from 26 Feb. 1975 (FN).

3. A perusal of the observations extracted in the discharge order dated 19.03.1975, issued to the Respondent O.P. Sharma reveal, that the Respondent

came to be discharged as a consequence of his having submitted a resignation. It is further apparent from the aforesaid extract, that the aforesaid resignation was accepted by the authorities. On the acceptance of his resignation, Respondent O.P. Sharma was discharged from service. As is apparent from the extract of the order dated 19.03.1975, the services of the Respondent O.P. Sharma came to be severed w.e.f. 26.02.1975. At the said juncture, i.e. on 26.02.1975, the Respondent O.P. Sharma was not entitled to any retiral benefits. For the first time, it was realised by him (i.e., the Respondent O.P. Sharma) that he may be entitled to retiral benefits, when he became aware of an order issued by the Government of India dated 14.04.1987. Reference in this behalf was made by the Respondent O.P. Sharma when he approached the Allahabad High Court by filing Writ Petition No. 5654 of 1998, so as to claim his pensionary benefits. In this behalf, it would be relevant to extract, underunder, paragraph 7 of the said Writ Petition:

7. That, the Govt. of India has issued order vide OM No. 2/4/87 PRC Dt. 14th April, 1987 that the Govt. servants will get pension under the CCS (Pension) Rules, 1972 either on superannuation or invalidity after rendering 10 years of the Temporary service and the Govt. has allowed benefit under Rule 19(1) of the CCS(P) Rules, 1972 to such employees who have retired on superannuation or invalidment / invalidation or without confirmation after rendering ten years of combined military Civil Service under the provisions of Rule 91(I) may be deemed to have been modified accordingly.

4. It is, therefore, that Respondent O.P. Sharma continued to address representations to his superiors, requiring them to release pensionary benefits due to him, under the Government Order dated 14.04.1987. In this behalf, it would be pertinent to mention, that prior to the issuance of the aforesaid order dated 14.04.1987, neither quasi-temporary service nor quasi-permanent service could be taken into consideration as qualifying service to determine his pensionary entitlement, on account of the fact, that the service rendered by the Respondent (O.P. Sharma), as has been noticed herein above, was not followed by other pensionable service, as was the previous requirement.

5. Since Respondent O.P. Sharma, despite his representations, was not favoured with an order, declaring his eligibility for pension, he filed a writ petition (bearing No. 5654 of 1998) in the Allahabad High Court, which eventually, came to be transferred to this Court. In this Court, the aforesaid writ petition was re-numbered as Writ Petition No. 273 of 2001 (S/S). The aforesaid Writ Petition was allowed by a learned Single Judge of this Court vide a judgment dated 22.03.2004.

6. The present Special Appeal has been preferred by the Union of India so as to assail the order passed by the learned Single Judge, on 22.03.2004.

7. The solitary contention advanced by the learned Counsel for the Appellants, during the course of hearing of the instant Appeal, was, that Respondent O.P.

Sharma, had himself made a request to relinquish his employment, for which, he submitted his resignation. The aforesaid resignation was based on his personal reasons. The resignation submitted by Respondent O.P. Sharma was accepted on 26.02.1975. Based on the aforesaid factual position, it is the contention of the learned Counsel for the Appellants, that Respondent O.P. Sharma, having severed his employment at his own for his personal reasons, cannot be considered to be eligible for pensionary benefits.

8. Insofar as, the instant contention advanced by the learned Counsel for the Appellants is concerned, it is not a matter of dispute that the claim of Respondent O.P. Sharma (for pensionary benefits) is regulated by Rule 5 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the "1972 Rules"). Rule 5 of the aforesaid 1972 Rules is being extracted hereunder:

5. Regulation of claims to pension or family pension.--

(1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.

(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The day of death shall also be treated as a working day.

9. A perusal of Clause (1) of Rule 5 (extracted herein above) reveals, that a claim for pension or family pension can be made by an individual, who, "is allowed to resign from service". The extracted portion of the communication dated 19.03.1975 (Annexure No. 4) reveals, that the resignation of Respondent O.P. Sharma was accepted by the authorities. In the aforesaid view of the matter, we have no hesitation to conclude, that Respondent O.P. Sharma was entitled to claim pension under Rule 5 of the 1972 Rules, inspite of the fact, that he was discharged from service at his own request, on account of the fact, that his resignation was accepted by the authorities.

10. It would be unfair to the learned Counsel for the Appellants, if we do not take into consideration another submission advanced by him, namely, that the claim of Respondent O.P. Sharma for pension is based on the Government Order dated 14.04.1987. It is the submission of the learned Counsel for the Appellants that the Government Order, issued in 1987, cannot bestow any benefit on Respondent O.P. Sharma, who severed his relationship with his employers, as far back as on 26.02.1975, inasmuch as, his resignation was accepted with effect from 26.02.1975.

11. Insofar as the instant contention is concerned, no such plea was raised at the hands of the Appellants, either orally or in writing, before the learned Single Judge. In fact, a perusal of the counter affidavit, filed in response to the writ petition filed by the Respondent, reveals that no such plea was raised at the hands of the Appellants. Even before us, it is not possible for us to evaluate the

instant submission advanced on behalf of the Appellant, in the absence of the Government Order dated 14.04.1987. Since, the aforesaid order has not even been placed on the record of the instant Appeal, it is not possible to assess it, so as to determine the veracity of the claim of the Appellant. It is, therefore, that we decline to entertain the instant plea raised at the hands of the learned Counsel for the Appellants.

12. For the reasons recorded herein above, we find no merit in this Appeal. We, therefore, hereby uphold the order passed by the learned Single Judge.

13. The Respondent O.P. Sharma approached Allahabad High Court, as far back as in the year 1998. Consequent upon the transfer of his case to this Court, the learned Single Judge allowed the writ petition (preferred by him) on 22.03.2004. No pensionary benefits have been paid to Respondent O.P. Sharma, although from the deliberations noticed herein above, there was hardly any ground for the Appellants to deny pensionary benefits to him. In the peculiar facts and circumstances of this case, it is necessary to direct the Appellants to release pensionary benefits to the Respondent O.P. Sharma, along with interest at the rate of 6% per annum from the date pension became payable to him till the date the same is eventually released by the Appellants. Ordered accordingly.

14. The instant appeal stands disposed of accordingly.