

(2018) 05 CAT CK 0101

In the Central Administrative Tribunal

Case No : Original Application No. 3730 Of 2015

U K Goel

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 05 CAT CK 0101

Hon'ble Judges : K.N. Shrivastava, Member (A)

Bench : Single Bench

Advocate : D S Mahendru, Subhash Gosain

Final Decision : Allowed

Judgement

1. Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

"ii) direct the respondents to grant retirement pension and consequential benefits to the applicant as had been given by them to the other similarly situated persons with effect from the date when the same were granted to Shri Mithilesh Kumar Sinha;

iii) direct the respondent to grant the arrears of pension with interest up-to-date to the applicant within the time frame as may be fixed by the Tribunal."

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant was appointed as Section Officer (Electrical) in Central Public Works Department (CPWD), on temporary basis, vide order dated 17.02.1966. He joined the service on 21.02.1966 and was declared quasi permanent vide Annexure A-4 order dated 04.06.1969.

2.2 In the year 1973, the International Airports Authority of India (IAAI) was formed and CPWD staff posted at Palam Airport were transferred to IAAI. The

applicant was also relieved by CPWD for joining IAAI vide Annexure A-5 order dated 16.07.1973. The terms and conditions of deputation were also stipulated therein.

2.3 The IAAI advertised the post of Assistant Engineer (Electrical) in 1976. The applicant, still on deputation to IAAI, also applied for the said post. He was selected and Annexure A-6 appointment letter dated 27.05.1976 was issued to him.

2.4 Pursuant to his selection as Assistant Engineer (Electrical), the CPWD was required to give its "no objection". The CPWD, vide its Annexure A-7 letter dated 26.06.1976, conveyed its "no objection" subject to the condition that "he is either absorbed by IAAI within 2 years of his appointment as Assistant Engineer or repatriated to C.P.W.D."

2.5 The CPWD, vide its Annexure A-8 office order dated 19.07.1976, relieved the applicant and allowed him to join his new assignment, retaining his lien for two years. The applicant was finally absorbed in IAAI w.e.f. 01.09.1977 and Annexure A-9 order dated 01.05.1978 was issued to this effect.

2.6 The applicant contends that he has been absorbed in IAAI w.e.f. 01.09.1977 and considering the fact that he had joined CPWD on 21.02.1966, it can be construed that he has rendered uninterrupted service of over 11 and half years in CPWD, and thus he is entitled for grant of pensionary benefits since similarly situated other employees of CPWD, who had rendered service in CPWD between 10 to 20 years and who had also been absorbed in IAAI, have been granted the pensionary benefits. In this connection, the applicant has cited cases of Mr. S K Dutta (Annexure A-13), Late Mr. Mithilesh Kumar Sinha (Annexure A-14) and Mr. Bhajan Dass (Annexure A-15).

2.7 The applicant has further contended that the CPWD had confirmed in service some of his juniors but similar benefit has not been extended to him by the CPWD. The applicant approached this Tribunal in O.A. No.1814/2010 seeking, inter alia, direction to the respondents to pass an order granting pro-rata pensionary benefits to him. The said O.A. was disposed of by the Tribunal vide order dated 16.01.2012 with the following observations/directions:

"2. On a specific query, the applicants counsel was unable to furnish information with regard to the rule which provides that pro rata pension upon completion of 10 years of service with quasi permanent status as is being claimed by the applicant herein. During the course of hearing on the Application, it is noted that the respondents were unable to ascertain the correct position with regard to the persons having been granted benefit of pro rata pension upon completion of 10 years of service with quasi permanent status with whom the parity is being sought by the applicant and, therefore, it would be appropriate on the part of the applicant to make a comprehensive representation containing full details of such persons whose cases he has relied upon in support of his claim so as to enable the respondents to examine the same and ascertain if any such benefit has been

given to these persons and further determine if the applicant is similarly situated entitling him to the same benefits which have been granted to these persons or else he be informed of the distinguishing feature of such cases resulting in the applicant not being similarly placed as persons with whom parity is being sought by him.

xxx xxx xxx xxx

4....this Application is disposed of on consensual basis by granting liberty to the applicant to make a representation to the respondents providing therein complete information of the persons who have been granted pro rata pension by the respondents upon completion of 10 years of service with quasi permanent status, including particulars of PPO made in their cases and if such a representation is made by the applicant within four weeks of receipt of a certified copy of this order, the same shall be duly considered by the respondents with reference to information so furnished by the applicant with whom he is seeking parity and pass appropriate orders thereon within three weeks from the date of receipt of a copy of the said representation."

2.8 As directed by the Tribunal, the applicant filed a representation dated 31.03.2013 to the CPWD, which was rejected vide Annexure A-1 communication dated 26.06.2013. Relevant portion of the judgment, giving the reasons for rejection, is reproduced below:-

"Even before this the Directorate Office vide order No.4/69/98 E.C.-6/PG/2805-08 dated 22.9.1999 and the Pay and Accounts Office on the basis of the above order had not found your request regarding payment of pro-rata pension feasible. Before 1.1.1986 only those employees were entitled to pension who were permanent or those temporary Govt. employees who had completed 20 years of services whereas, you have completed only 11 years 6 months and 10 days service."

2.9 The applicant submitted yet another representation dated 04.09.2014, which was also rejected vide impugned Annexure A-1 letter dated 13.10.2014. Through this letter, the applicant was informed that his request cannot be considered since he was a quasi permanent employee in CPWD and such employees are not entitled for pension.

Aggrieved by the impugned A-1 communication dated 13.10.2014, the applicant has filed the present O.A. praying for the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which they have broadly averred as under:-

3.1 Before 01.01.1986, only those employees were entitled to pension, who were permanent or quasi permanent government employees and had completed 20 years of service. The applicant was a quasi permanent employee and has rendered only 11 years, 6 months and 10 days of service in CPWD.

3.2 Before 01.01.1986, permanent status was granted to the employees against availability of permanent posts, if there was no lien of the said post with any other government employee.

3.3 The permanency and seniority lists were prepared Region-wise. The documents relied upon by the applicant in support of his claim pertain to the employees working in the Eastern Region and not that of Northern Region in which the applicant was working.

4. The applicant filed a rejoinder, in which additionally he has contended that Mr. S K Dutta, Junior Engineer (Civil) and Mr. C K Basu, Junior Engineer (Electrical) had also joined the IAAI during the year 1972 from CPWD on deputation basis and later absorbed on 01.09.1977. He has further stated that Mr. Bhajan Das from Northern Region had joined CPWD on 30.08.1967 and had rendered total service of slightly over 10 in CPWD and was granted the pensionary benefits. None of the quasi permanent staff of CPWD had completed 20 years of service, nor they were confirmed at the time of their absorption but yet they have been granted the pensionary benefits, thus the applicant has been discriminated against.

5. The respondents have also filed a sur-rejoinder, in which they have reaffirmed that a quasi permanent staff is entitled for pensionary benefits only after rendering not less than 20 years of service.

6. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for parties on 28.11.2017. Arguments of Mr. D S Mahendru, learned counsel for applicant and that of Mr. Subhash Gosain, learned counsel for respondents were heard.

7. Mr. D S Mahendru, learned counsel drew my attention to Annexure A-12 order of CPWD dated 10.08.1998 granting pensionary benefits to as many as 6 Junior Engineers, who had initially joined the CPWD and later on were deputed to IAAI and finally absorbed in IAAI. Mr. Mahendru particularly drew my attention to the following portion of Annexure A-12:-

"You are, therefore, requested to refund the amount of Terminal Gratuity already received to R.B.I., Calcutta against the Head of A/c" 0071 - Pension & Leave Salary Contribution" and intimate the refund of Terminal Gratuity receipted by R.B.I. with documentary evidence, to this office for processing of Pension cases and immediate submission of Pension cases to the concerned Pay & Accounts Officer (EZ), CPWD, Calcutta for final settlement."

He also stated that such benefits have also been granted to late Mr. Mithilesh Kumar Sinha, Junior Engineer (Electrical) vide Annexure A-14 order dated 19.01.2001.

8. Mr. Mahendru stated that the Executive Engineer (Electrical) P&A, Outer Delhi Elect. Circle addressed to the Superintendent Engineer, Delhi Central Elect. Circle II, CPWD, vide Annexure A-17 letter dated 15.06.2001, forwarded a

representation of the applicant for consideration, who, in turn, vide Annexure A-19 letter dated 01.08.2001, wrote to the DGW (EC-VI Section), CPWD seeking instructions in the matter. Relevant portion of the said communication is extracted below:-

"Now, Shri U.K. Goel has again requested this office vide his letter dated 8.6.2001 (copy enclosed) that his case is similar to one Shri Mithilesh Kr. Sinha, Ex-J.E. (E) who was also a J.E. (E) in the CPWD, his date of seniority in the grade is 6.5.1966 and has been confirmed now by the Superintending Engineer (E), Calcutta Central Elect. Circle, CPWD, Calcutta w.e.f. 1.4.1972 vide their O.M. No.8 (25) CCEC-I/EI/103 dated 19.1.2001. Since both Shri U.K. Goel and Lt. Shri Mithilesh Kr. Sinha were J.E.s (E) in CPWD and permanently absorbed in IAAI, and the incumbent Shri Mithilesh Kr. Sinha has been confirmed by CPWD. Now, as such, you are requested to kindly advise in the matter as to whether Shri U.K. Goel's case for confirmation w.e.f. 1.4.1972, can be considered by holding necessary DPC."

9. Mr. Mahendru placed reliance on the judgment of Hon"ble High Court of Judicature at Patna in Union of India & others v. Smt. Sita Devi w/o late Mithilesh Kumar Sinha (Civil Writ Jurisdiction Case No.15591/2013) decided on 24.03.2015. He said that the Patna Bench of this Tribunal, vide its order dated 31.05.2012 in O.A. No.219/2010, had granted the pro-rata family pension to the wife of Mr. Mithilesh Kumar Sinha, which was challenged before the Hon"ble High Court of Patna by the Union of India. The contention of Union of India therein was that the scheme for making the quasi permanent employee of the CPWD as permanent came in the year 1981 and since late Mr. Mithilesh Kumar Sinha had left CPWD prior to the scheme coming into existence, his wife cannot claim the benefits of the scheme for the purposes of getting pro-rata family

pension. The Hon"ble High Court, however, disagreed with the plea of Union of India and dismissed the writ petition vide its order dated 24.03.2015. The relevant portion of the order is extracted below:-

"Learned counsel for the sole respondent then points out that CPWD is aware that similar cases were filed in Kolkata Bench of Central Administrative Tribunal. The CAT of Kolkata allowed the relief against which CPWD went to Apex Court without success. Then there was another case where Kolkata CAT ordered that similar treatment has to be given to all similarly situated persons and accordingly, several persons, similarly situated, are enjoying the benefits. Though we cannot direct to perpetuate illegality but where the order of Tribunal or Court is accepted by the authority, then, authorities cannot choose persons who would be given benefit of that order or judgment and ignore other similarly placed persons. While therefore, setting aside the order of the Tribunal as noticed above, we direct the authorities in CPWD to examine other cases similarly situated who have been consciously granted benefit, may be pursuant to the order of the court, if there are such persons, then, the sole respondent cannot be denied the benefit. This exercise must be done by CPWD in next four months

positively."

Mr. Mahendru, thus, prayed for the same benefits that have already been granted to late Mr. Mithilesh Kumar Sinha.

10. Per contra, Mr. Subhash Gosain, learned counsel for respondents, by and large, reiterated the averments made in the reply and strenuously argued that the applicant is not entitled for pensionary benefits since his status had continued as quasi permanent and he had not rendered minimum 20 years of service in the CPWD for becoming entitled to pension.

11. I have considered the arguments of learned counsel for the parties and perused the materials placed on record.

12. The 1981 scheme makes the quasi permanent employees eligible for pensionary benefits on their having rendered more than 10 years of service in the CPWD. The sole reason as to why the case of the applicant was time and again rejected by the CPWD for grant of pensionary benefits was that he was never confirmed as regular employee in CPWD and that he was quasi permanent and in that capacity, minimum 20 years of service in CPWD was required for gaining eligibility for the pensionary benefits. The records would reveal that the CPWD had not been following a uniform policy in dealing with identical cases. The cases of Mr. S K Dutta (Annexure A-13), Late Mr. Mithilesh Kumar Sinha (Annexure A-14) and Mr. Bhajan Dass (Annexure A-15) were no different from that of the applicant. They have been granted the pensionary benefits on rendering more than 10 years of service even though they were in quasi permanent capacity while serving in the CPWD.

13. The argument put-forth on behalf of the respondents that seniority is maintained Region-wise, and that only the quasi permanent employees of Eastern Region, who were sent on deputation to IAAI and later on absorbed, have been granted the pensionary benefits, and that the applicant could not be granted the similar benefits, as he was working in the Northern Region, defies all logic and reasoning. Such an approach of CPWD has definitely been discriminatory in nature and it cannot be countenanced.

14. The Hon"ble High Court of Judicature at Patna in the case of Smt. Sita Devi w/o late Mithilesh Kumar Sinha (supra) has directed for grant of the pro-rata family pension benefits to Smt. Sita Devi. The case of Mr. Mithilesh Kumar Sinha is similar to that of the applicant herein.

15. I may also like to further observe that the respondent-CPWD had allowed the applicant as well as few other CPWD Junior Engineers to retain the lien for 2 years after they were selected as Assistant Engineers by IAAI. Pertinent to note that the lien is normally allowed to be retained to the permanent employees. Hence, the action of the respondents to allow the applicant to retain his lien for 2 years vide their order dated 19.07.1976, would go to prove that the applicant was treated as regular employee, even though on the record he continued as

quasi permanent employee in CPWD.

16. In view of the judgment of Hon"ble High Court of Patna in Smt. Sita Devi w/o late Mithilesh Kumar Sinha (supra), as well as considering the fact that identically placed officials of Eastern Region have been extended the pensionary benefits on completion of a minimum of 10 years of service, but less than 20 years in CPWD, I see no reason as to why the applicant is denied such benefits.

17. In the conspectus of discussions in the preceding paragraphs, I allow this O.A. in the following terms:-

The respondents are directed to grant pensionary benefits to the applicant taking into consideration 11 years, 6 months and 10 days service rendered by him in CPWD, in accordance with the 1981 scheme. This shall be done within a period of three months from the date of receipt of a copy of this order. It is, however, made clear that the applicant shall not be entitled for any arrears of pension.

No order as to costs.