

(2010) 07 DEL CK 0243

In the Delhi High Court

Case No : Writ Petition (C.) No. 6464 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

Mr. V.K. Puri

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 18, 19, 5(1)
Constitution of India, 1950 — Article 226

Citation : (2010) 5 SLR 442

Hon'ble Judges : Vipin Sanghi, J;Anil Kumar, J

Bench : Division Bench

Advocate : R.V. Sinha, R.N. Singh and Rajesh Upadhyay, for the Appellant; A.K. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners Union of India through Ministry of Defence impugns order dated 22nd January, 2008 passed in O.A No. 851/2007, V.K. Puri v. Union of India directing the petitioners to treat the Navy service of the respondents towards qualifying service for grant of prorata pension.

2. Brief facts to comprehend the disputes between the parties are that the respondent was enrolled in Indian Navy as Boy I on 20th August, 1945 and he served as apprentice till 10th September, 1947 and his service was treated as approved war service. Thereafter on 20th March, 1950 respondent joined the Indian navy.

3. As per the rules in the year 1960 on release from the service an employee was entitled to avail the benefit of leave pending retirement and consequently the respondent who was to be discharged from Navy with effect from 19th March, 1960 was given 60 days leave and therefore, he joined MES service with effect from 23rd January, 1960 as store keeper taking his leave into consideration.

4. After joining the MES service on 23rd January, 1960 petitioner sought

seniority for the post of store keeper taking into consideration the service rendered in Navy and consequently for the post of Storekeeper Grade II with effect from 20th March, 1964, respondent's services rendered in Navy was treated as qualifying service in MES for all purposes including seniority promotion and other pensionary benefits.

5. In MES the petitioner was further promoted to the post of storekeeper Grade I with effect from 15th March, 1963 and to the post of supervisor Grade II with effect from 14th June, 1965.

6. While serving with MES, in order to join Hindustan Aeronautics Ltd, a public sector undertaking respondent submitted his technical resignation with effect from 20th May, 1965 which was accepted by order dated 31st July, 1965 and 30th April, 1966. Respondent joined Hindustan Aeronautics Ltd. on 26th June, 1965. On joining Hindustan Aeronautics, as the respondent had rendered more than 10 years of service in Navy and MES, seniority, promotion and other benefits were given to the respondent on the basis of past services in Navy and MES.

7. After retiring from Hindustan Aeronautics Ltd. on attaining the age of superannuation, the petitioner sought his pensionary benefits. The claim of the petitioner for grant of pensionary benefits was rejected on 30th May, 2000 primarily on the ground that the respondent was not absorbed in Hindustan Aeronautics Ltd. in public interest but he had joined the public sector undertaking on his own and that Rule 18 and 19 of CCS (P) Rules, 1972 were not applicable to the respondent as he had joined the Hindustan Aeronautics Ltd. in 1965.

8. Since the petitioner was not absorbed in Hindustan Aeronautics Ltd. in public interest and he had joined the PSU on his own, a petition was filed against the order dated 30th May, 2000 being O.A No. 491/2001 which was dismissed. Though the claim of the respondent was rejected on the ground that he had not joined the public sector undertaking in public interest and, therefore, he is not entitled for any benefit, the Government of India later on issued a circular dated 20th January, 2004 and 1.3.2004 clarifying and holding that pro rata pension is to be allowed to the absorbers in Public Sector Undertakings irrespective of whether their absorption in the public sector organisation was in the public interest or otherwise and even if the resignation was on the volition of the employee, w.e.f 16.5.1967. The OM dated 1.3.2004 had further clarified that even if absorption had taken place prior to 16.6.1967 the benefits will become available to the absorbers w.e.f 16.6.1967.

9. On the basis of these OM which were issued after the dismissal of respondent's earlier application, he filed a representation. His representation was not considered nor decided nor any response had come forward, therefore, the respondent had filed an OA 566 of 2006 which was decided on 28.4.2006 directing the petitioners to consider the representation of the respondent in the light of the circulars/OMs dated 20.1.2004 and 1.3.2004.

10. The petitioners by an order dated 12th October, 2006 considered the representation of the respondent in the light of the OMs dated 20.1.2004 and 1.3.2004 holding that CAG circulars have no applicability as regard Pro rata Pension dealt by HQ and no such orders have been issued by the Ministry of Defense. It was also held that the CAG order dated 20.1.2004 was issued to the Accountant General (A and E), Andhra Pradesh, Hyderabad and that context is not known to MES nor it is applicable to the petitioners. Relying on earlier order passed in the petition of the respondent it was held that the service of the respondent in Indian Navy would not be counted as qualifying service for earning Civil Service as the respondent had not elected to count the service in Navy towards Pay and Pension while joining MES. It was further held that his service in MES fell short of 10 years which was from 23.1.1960 to 20.5.1965 (5 years and 4 months). Relying on Rule 5(1) of CCS (Pension) Rules, 1972 it was observed by the Petitioners that any claim to pension or family pension is regulated by the provisions of the those rules which are applicable at the time when the employee retires or is allowed to resign. Since the respondent had resigned on 20th May 1965 it was held that he is not entitled for pension.

11. The respondent challenged the order dated 12 October, 2006 by filing an application being OA No. 851 of 2007 titled V.K. Puri v. Union of India through secretary Ministry of Defense and Ors. which was allowed by the tribunal by order dated 22nd January, 2008 holding that after joining Indian Navy on 20th March, 1950, respondent was discharged after completion of 10 years service on 19th March, 1960 and while joining MES he had applied for treating the military service for the purpose of pensionary benefits which were granted to him along with his seniority for the post of storekeeper Grade II w.e.f. 20.3.1954 with all consequential benefits. The Tribunal has further held that earlier challenge by the respondent was declined on the ground that while serving in MES, respondent had submitted his technical resignation w.e.f 20.5.1965, however, dismissal of his earlier petition was prior to issuance of OMs dated 20.1.2004 and 1.3.2004. The Tribunal held that once the Navy service as per OM of 1964 was to be treated as a qualifying service and the service in Navy was treated for all purposes, including seniority and promotion, it could not be ignored for a considering it as qualifying service for pro rata pension. The plea of res judicata was also repelled on the ground that OMs dated 20.1.2004 and 1.3.2004 gave fresh cause of action. The order dated 28th October, 2006 was also set aside on the ground that it had not considered the instructions of 1964 and the decision that the respondent had not completed 10 years service is contrary to the instructions and the seniority and promotion given to the respondent in MES on the basis of those instructions. In the circumstances, the petitioners were directed to consider the service rendered by respondent in Navy for a grant of pro rata pension.

12. An application for review was also filed by the petitioners against the order dated 22nd January, 2008 which was dismissed by the Tribunal by order dated 6th May, 2008. The said orders are challenged by the petitioners in the presented

petition, inter alia, on the ground that the service rendered by the respondent in Navy could not be counted for the purpose of pro rata pension. It is also contended that the respondent is not entitled for pro rata pension as he had given technical resignation from MES and he was not absorbed in public sector undertaking, HAL, in public interest and he cannot be allowed to take benefit of subsequently liberalized policies on grant of pro rata pension. It is asserted that The Tribunal has exceeded its jurisdiction in exercising its power of judicial review in directing the petitioner to treat the service rendered by the respondent in Navy for the purposes of pro rata pension. Reliance was also placed on *Malaprabha Sugar Factory Ltd. v. UOI* 86 Anr. (1994) 1 SCC 618 holding that quashing decisions may impose heavy administrative burden on the administration and it may also lead to increase in unbudgeted expenditure. It was contended by the petitioners that it would be very difficult for them to comply with the decision dated 22nd January, 2008. It is pleaded that the respondent elected not to count his service in Navy while joining MES and his service in MES was for five years and four months which was short of 10 years service required for grant of pro rata pension. It is also contended that OM 20th January, 2004 is not applicable to the respondent.

13. The petition is contested by the respondent contending, inter alia, that he had joined the MES service as a storekeeper on 23rd January, 1960 and he had applied for treating his military service as service rendered for the purpose of pensionary benefits and he was granted seniority for the post of storekeeper w.e.f 20th March, 1954 and his service rendered in the Navy was treated as qualifying service for all purposes in MES and therefore he was also promoted to the post of supervisors Grade II on 14th June, 1965. He joined HAL on 26th June, 1966 after rendering more than 10 years of pensionable service in MES and retired from there on attaining the age of superannuation. It was contended that circular dated 20.1.2004 is the clarification given by CAG and cannot be construed to mean applicable to those employees whose pension is to be regulated by A.G (A and E), Andhra Pradesh. The respondent also relied on the decision of a Division Bench of this Court in *Shri K.K. Dhir Vs. Union of India (UOI) and Others*,) holding that all Government servants having 10 or more years of qualifying service before moving to PSUs, either on transfers/deputation, or on their own volition and there being not a declaration of their move in public interest are entitled to pro rata pension.

14. This court has heard the Learned Counsel for the parties in detail. Reliance of the Counsel for the petitioners on *Shri Malaprabha Coop Sugar Factory Ltd.* (supra) is misplaced. The said precedent is not relevant for the present facts of the case. In the said case the Supreme Court was dealing with the question of fixation of additional price payable to sugar cane grower. It was held that the price had to be fixed on the basis of relevant factors and not by adopting notional figures. The ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various

observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances in two cases.

15. The case of the respondent is completely distinguishable. The plea of the respondent is that his service in Navy was treated for all purposes when he joined MES and he was even given seniority and promotion on the basis of the service already rendered in Navy. In the circumstances it cannot be held that his service rendered in Navy would not be counted for pro rata pension. This is not the case of the petitioners that seniority and promotion to the respondent in MES was given contrary to any rules or any instructions. Rather the plea of granting seniority in MES was accepted on the basis of instruction prevalent at that time and he was given promotion and seniority. This aspect cannot be denied by the petitioners. The Learned Counsel for the petitioners is unable to explain as to how promotion and seniority could be granted in MES to the respondent on the basis of his services rendered in Navy and under the instructions or regulations or OM the service rendered in Navy is not to be counted for the purpose of pension which service had already been counted for the purpose of seniority and promotion. This fact that the respondent was granted promotion and seniority on the basis of the service rendered in Navy cannot be denied and has not been denied categorically and specifically by the petitioners. In the circumstances the finding of The Tribunal that the service of the respondent rendered in Navy is to be counted for the purpose of pro rata pension cannot be faulted. Consequently it also cannot be held that the respondent did not render 10 years of service in MES and he had rendered only five years four months service in MES without counting the service of Navy. Equally unacceptable is the plea that while joining MES, the respondent had not opted or elected to count his service of Navy. It is improbable nor any reason has been disclosed by the petitioners and as to why the respondent would not opt to elect to count his Navy service for the purpose of pension when he had opted to count his service of Navy for the purpose of selection and promotion.

16. The next plea on behalf of petitioners is that the respondent was not absorbed in public sector undertaking in public interest and he had resigned from MES on his own volition. This cannot be disputed by the petitioners that by OM dated 16.6.1967, permanent Central Government employees on deputation/transfer were made eligible for pro rata pensionary benefits. Earlier this benefit was restricted only to those who were absorbed on or after 16 June, 1967. In K.K. Dhir (supra) relied on by the respondent it was held that D.O.P.T. had issued an O.M. dated 25.3.1977 based on two more OMs dated 8.11.1968 and 21.4.1972 holding that the government servants who had resigned on their own volition and joined the PSU on or after 8.11.1968 were made eligible for pro rata pension, however, actual financial benefits were allowed only from 1.8.1976 and the distinction between those who had joined on their own volition and those

who joined in public interest had been obliterated. Despite this clear position, the Counsel for the petitioner has emphatically contended that the respondent is not entitled for pro rata pensionary benefits as he had not joined PSU in public interest.

17. Categorization of pensioners who were absorbed after 16 June, 1967 and those who absorbed prior to that date was declared unconstitutional by the Supreme Court in the case of T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Others, and thereafter, another OM dated 3rd January, 1995 was issued extending the benefit of pro rata pension to even those who joined PSUs prior to 16.6.1967. The respondent had joined HAL on 26th June, 1966 and so he became entitled for pro rata pension. In Union of India (UOI) and Others Vs. Sh. O.P. Sharma and Another, pro rata pensionary benefits were extended even to a person who had moved to PSU prior to 8.11.1968 on his own volition which aspect was noted by the Division Bench of this Court in K.K. Dhir (supra). This Court had further held that the issue with regard to grant of pro rata pension to those who had joined a PSU after rendering more than 10 years of government service, the scope was widened either by the government itself or by judicial pronouncements. It was held that the right to receive pension is a valuable right which vests in the government servant and it is not an ex-gratia payment and it is on account of the services rendered in the past. The Division Bench of this Court in K.K. Dhir (supra) in para 13 had held as under:

13. The issue with regard to grant of prorata pension to those Government servants who had joined a PSU after rendering more than 10 years of Government service is a matter which has seen widening of the door from time-to-time, either by the Government itself or by judicial pronouncements. Initially such benefit was sought to be restricted by fixing a cut-off date and by stipulating that the movement from Government service to a PSU should be a transfer or deputation as opposed to a move by the Government servant of his own volition. An additional condition was added that the move should have been declared by the Government to be in the public interest. These requirements had their roots in FRs 26 and 37. So far as the cut-off dates fixed by the Government are concerned, following D.S. Nakara (supra) and Thiruvengadam (supra), it stands concluded that such classification on the basis of a cut-off date which is fixed without any rationale would be arbitrary. Therefore, merely because the petitioners' case pertains to 1965/1966, he cannot be denied prorata pension, if otherwise he fulfills the requirements for grant of this benefit. So far as the twin conditions that, (i) the Government servant should have been first transferred/deputed to the PSU and thereafter got absorbed in the PSU, as opposed to his movement of his own volition; and (ii) his movement to the PSU should have been declared in public interest, is concerned, the same have also been relaxed by the Government from time-to-time, as would appear from the Government OM's of 1968, 1972, 1977 and 1991. Once these conditions have been relaxed, it does not stand to reason that these relaxations should be only from and after a

cut- off date, which has no rational basis. The relocation would be applicable to all such Government servants who join PSUs even before such arbitrarily fixed cut-off dates. Consequently, in our opinion, all Government servants, who had 10 years or more of qualifying service before they moved to PSUs, either on transfer/deputation, or of their own volition, and in respect of whom there was a declaration of their move being in Public Interest or not, would be entitled to prorata pension. Pension, it has been held is not a bounty payable on the sweet will and pleasure of the Government. The right to receive pension is a valuable right vesting in a Government servant. It is not an ex gratia payment. It is a payment for the past services rendered. [Reference may be made to Deokinandan Prasad Vs. The State of Bihar and Others, and Subrata Sen and Others Vs. Union of India and Others,

18. This was clarified by the CAG's circular No. 20 NGE (Entt.)/I-2006 (36) dated 20.1.12004 in reply to query raised by the A.G (A and E) Andhra Pradesh, Hyderabad. This classification cannot be distinguished by the petitioners on the ground that this is not applicable to MES and the respondent had resigned from MES on his own volition to join HAL, a public sector undertaking. The whole approach of the Learned Counsel for the petitioner is misplaced and is without any factual and legal basis. The said circular on the basis of which the petitioners were directed to pass a fresh order by the Tribunal in the earlier petition filed by the respondent had categorically stipulated that the only relevant conditions of subsequent OMs are that the government servant had put in not less than 10 years of qualifying service and he was holding a permanent post or substantive post before being appointed in the public sector undertaking. The respondent even in our analyses of facts and circumstances was holding a permanent post in MES and taking into consideration his services rendered in Navy along with the service in MES had rendered not less than 10 years of qualifying service and thus he is entitled for pro rata pension. In the circumstances the order of the tribunal impugned by the petitioners directing them to treat the erstwhile service of respondent in Navy towards qualifying service for grant of pro rata pension cannot be faulted on any of the grounds raised by the petitioners. Further direction by The Tribunal that in such an event of treating the service in Navy as a qualifying service for grant of pro rata pension, consequence would be operative as per Ministry of Finance OMs which are applicable to the respondent, also cannot be faulted and impugned on any of the grounds raised by the Learned Counsel for the petitioners before us.

19. In the totality of facts and circumstances this Court does not find any ground to interfere with the Orders of Tribunal impugned before us. This Court does not find any irregularity or any illegality in the orders so as to entail any interference in any manner in exercise of its power under Article 226 of the Constitution of India. The writ petition is therefore, is without any merit and it is dismissed. Thus petitioners shall comply with the directions of the tribunal within a period of three months. Considering the facts and circumstances, the petitioners shall also be liable to pay a cost of Rs. 10,000/- to the respondent.