
(2011) 02 P&H CK 0207
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11852 CAT of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Sher Singh and Another

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 14

Citation : (2011) 02 P&H CK 0207

Hon'ble Judges : Tej Pratap Singh Mann, J; M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition under Article 226 of the Constitution is directed against the order dated 5.3.2007 (P-1) passed by the Chandigarh Bench of the Central Administrative Tribunal (for brevity "the Tribunal") holding that the original applicant-Respondent would be deemed to have retired on 9.7.1992 and consequently he would become entitled to the payment of arrears of pension from 9.7.1992 to 31.1.1998. The other conclusion reached is that the original applicant-Respondent has to be paid pension and other retiral benefits along with arrears from 9.7.1992 and consequential revision in pension w.e.f. 1.1.1996 and subsequent thereto i.e. 1.1.2006.

2. Brief facts of the case which led to the filing of the instant petition by the Union of India and its Officers are that the original applicant-Respondent joined the Petitioner-department on 21.7.1959. He claimed to have served the department till 31.1.1998. He was working with the Petitioner-department when he was sent on deputation to DCW, Patiala. His deputation was recalled on 9.7.1992 by the Diesel Locomotive Works, Varanasi. However, the case of the Petitioners is that he remained absent from duty and went on challenging the order of his repatriation dated 9.7.1992 up to Hon'ble the Supreme Court by filing SLP No. 5607 of 1996, which was eventually dismissed on 16.1.1998. He was to superannuate on 31.1.1998 when he requested the DCW, Patiala to retire

him. On the basis of the request made by him, Petitioner No. 1 retired him with a stipulation that the period of absence from 9.7.1992 to 31.1.1998 was to be treated as "Dies-Non". Accordingly, he was treated to have retired from service from 31.1.1998. His pensionary benefits were calculated in accordance with the Railway Services (Pension) Rules, 1993 (for brevity "the Rules"). Vide order dated 27.7.2005 (P-3), the original applicant-Respondent became a pensioner from 1.2.1998 and the same was challenged before the Tribunal by filing O.A. No. 810-PB of 2005 (P-2). The Tribunal vide its order dated 5.3.2007 held that the original applicant-Respondent would be granted pension by following Rule 14(x) of the Rules. According to the aforesaid Rule, the period of unauthorized absence in continuation of authorized joining time or in continuation of authorized leave of absence treated as overstay, could not be treated as service for the purpose of pensionary benefits. Accordingly, the period from 9.7.1992 to 31.1.1998 was not to be reckoned for the purpose of qualifying service and the original applicant-Respondent became entitled to earn the pension/pensionary benefits from 9.7.1992 and arrears were payable from that date till 31.1.1998. The Tribunal has issued direction for settling the account of the original applicant-Respondent by allowing him pension and pensionary benefits with respect to the said date and the consequential revision in pension which have taken place w.e.f. 1.1.1996 and 1.1.2006.

3. Mr. Marwaha, learned Counsel for the Petitioners-Union of India has argued that the order passed by the Tribunal is not in accordance with the Rule 14 of the Rules in as much as the date of retirement of the applicant-Respondent has been changed whereas the overstay of leave is a misconduct and would result in forfeiture of whole service.

4. Mr. Sodhi, learned Counsel for the applicant-Respondent has, however, argued that there is nothing in the Rule 14 of the Rules which may result into complete depreciation of pension and other benefits to the original applicant-Respondent and the order passed by the Tribunal is strictly in accordance with the Rules.

5. Having heard the learned Counsel for the parties, we are of the considered opinion that the instant petition is wholly misconceived and the same is liable to be dismissed. In order to appreciate the controversy, it will be necessary to read Rule 14(x) of the Rules, which is set out below:

Rule 14. x x x x x x x x

(x) period of unauthorized absence in continuation of authorized joining time or in continuation of authorized leave of absence treated as overstay.

6. A perusal of the aforesaid Rule would show that the period of unauthorized absence in continuation of authorized joining time or in continuation of authorized leave of absence treated as overstay, could not be treated as service for the purpose of pensionary benefits. This is exactly what the Tribunal has ordered because it has been found by the Tribunal that the original applicant-Respondent remained absent from duty when he was ordered to be repatriated

on 9.7.1992 to his parent department, namely, Diesel Locomotive Works, Varanasi. He went up to Hon"ble the Supreme Court where his SLP No. 5607 of 1996 was dismissed on 16.1.1998, which was barely fifteen days before his date of retirement i.e. 31.1.1998. Eventually he was superannuated from DCW, Patiala where he was sent on deputation. The period from 9.7.1992 till 31.1.1998 has not been considered as a qualifying service for the purpose of pension because the original applicant-Respondent had remained absent from duty during this period.

7. The contention of Mr. Marwaha that the applicant-Respondent could not have earned any pension is devoid of any merit because firstly the Petitioners have passed order on 27.7.2005 (P-3) and secondly no enquiry with regard to absence from duty has been initiated against the applicant-Respondent granting opportunity to him. In the absence of any enquiry in accordance with the applicable rules, no doctrine of cut in pension or forfeiture of service could be invoked. The aforesaid contention is wholly misconceived.

8. As a sequel to the above discussion, this petition fails and the same is dismissed.