(2015) 09 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 20830 of 2015

Yash Paul Raheja — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 226

Citation : (2016) 1 SCT 495

Hon'ble Judges : Muttaci Jeyapaul, J;Darshan Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Darshan Singh, J—The present civil writ petition under Article 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari to quash the order dated 9.9.2014 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called ''the Tribunal) in Original Application No. 1643/PB/2013 and the review order dated 1.12.2014 Annexure P-2 being violative of Articles 14, 16, 19 and 21 of the Constitution of India and Rule 48 of the Central Civil Services (Pension) Rules, 1972 (hereinafter called ''the Pension Rules''). The petitioner has also sought enhancement of full pension which allegedly has been wrongly calculated at the time of retirement.

2. The petitioner has filed the OA alleging therein that he was recruited as a Clerk in the Department of Posts and Telegraphs in August, 1965 under the control of Senior Superintendent Post Offices, Patiala Division, Patiala. The petitioner joined the Department on 17.8.1965 and served till the date of his voluntary retirement i.e. 28.2.1995. He has rendered the total service of 29 years, 6 months and 11 days. That according to Rule 48B of the Pension Rules, after addition of 5 years qualifying service, his total span of service period becomes 34 years, 6 months and 11 days. According to Rule 22 of the Pension Rules, the period spent by him during training immediately before his

appointment was also to be added towards qualifying service. Thus, his total span of service comes to 34 years, 9 months and 11 days. He has also pleaded that the period shown as dies-non is not correct and is the result of tampering, manipulation and overwriting. That period is also to be counted towards the qualifying service. The total qualifying service of the petitioner comes to be more than 33 years and according to the Pension Rules, he is entitled to full pension at the time of retirement which was denied to him. Hence, he filed Original Application No. 1643/PB/2013.

3. The case of the petitioner was contested by the respondents on the ground, inter alia, that the petitioner was appointed as Postal Assistant in the respondent-Department on 5.11.1965 and had voluntary retired on 28.2.1995. He served the Department about 29 years 3 months and 23 days out of which 728 days were treated as dies-non, 232 days were treated as extraordinary leave without medical certificate and 321 days extraordinary leave on medical grounds. Thus, the total nonqualifying period comes to 960 days i.e 2 years 7 months and 20 days. The exact service rendered by him comes to 26 years 8 months 3 days. As per Rule 48B available at the relevant time, the petitioner was entitled to 4 years and 11 months of qualifying service in addition to his service span. In this manner, his total qualifying service for calculating the pension comes to 31 years 7 months and 3 days. It is further pleaded that due to gap between the completion of the training and entry in service, his training period cannot be counted towards the qualifying service. It was further pleaded that the petitioner had also filed Original Application No. 535/PB/2008 on similar grounds which was dismissed by the learned Tribunal on 24.3.2009. Thus, the respondents pleaded that as per the Pension Rules, the petitioner was not entitled to full pension and the respondents have acted in accordance with the statutory provisions and instructions.

4. The OA filed by the petitioner was dismissed by the learned Tribunal vide impugned order dated 9.9.2014 and the review application was also dismissed vide order dated 1.12.2014. Hence, this petition.

5. We have heard the petitioner in person and have carefully perused the paper book.

6. The petitioner contended that his pension has been wrongly calculated by the respondent-Department. He has rendered more than 34 years of qualifying service. He joined the respondent-Department on completion of his training on 17.8.1965 and sought the voluntary retirement on 28.2.1995. He has rendered 29 years 6 months and 11 days of actual service. He further contended that according to Rule 48B of the Pension Rules, he was also entitled to addition of 5 years of qualifying service. In this way, the total span of qualifying service comes to 34 years 6 months and 11 days. He further contended that as per Rule 22 of the Pension Rules, the training period was also to be counted towards the qualifying service. He contended that the respondent-Department has wrongly shown the gap in his service. He has drawn our attention to Annexure A-8 (page

104 of the paper book) to show that his training period was approved by the Assistant Postmaster- General, Punjab Circle. He also pleaded that period of dies-non have also been shown illegally by tampering with the record and making manipulations therein. He further contended that Annexure A-6 is the pension calculation sheet which shows that his pension was originally calculated @ Rs. 793/- per month but later on it has been reduced illegally to Rs. 786/- per month in the Pension Payment Order. Thus, he contended that the respondents have acted illegally against the mandatory provisions of the Pension Rules and he is entitled to the full pension as he has rendered the qualifying service for more than 33 years.

7. We have duly considered the aforesaid contentions.

8. We do not find any substance in the contentions raised by the petitioner. In the OA, the petitioner has raised the issues that his non-qualifying service has been wrongly calculated as a result of tampering with the record and manipulations. Secondly, the period of his training was also to be counted towards the qualifying service and thirdly that he has not been granted the full weightage of 5 years for calculating the qualifying service towards pension as per Rule 48B of the Pension Rules.

9. All these issues have been elaborately dealt with by the learned Tribunal. As per the written statement available at page 64 of the paper book filed by the respondents to the Original Application 728 days were treated as dies-non and 232 days were treated as extraordinary leave without medical certificate. This total period of 960 days were counted towards non-qualifying service period. The petitioner has alleged that dies-non have been wrongly shown on the basis of the tampering with the record and manipulations therein. However, this fact has not been disputed that earlier the petitioner had filed OA No. 535/PB/2008 with respect to the claim for leave encashment on voluntary retirement. The impugned order dated 9.9.2014 shows that the said original application was dismissed by the learned Tribunal on the ground that there was no leave to the credit of the applicant at the time of his retirement. So, the correctness of the leave account has already been determined by the learned Tribunal in the previous OA No. 535/PB/2008 and the findings of the Tribunal in that OA has attained finality which cannot be re-agitated in the present petition. Thus, the claim of the petitioner that his non-qualifying service has been wrongly calculated on account of dies-non and extraordinary leave without medical certificate, has no substance and this period cannot be counted towards the qualifying service and has been rightly excluded by the respondent-Department.

10. As per the written statement filed by the respondents to the Original Application, the petitioner has joined the Department on 5.11.1965 whereas the petitioner has alleged that he joined the services on 17.8.1965 on completion of the training but the petitioner has not been able to place on file any document to show that he has actually joined the service as Postal Assistant with the respondent-Department on 17.8.1965 and his date of joining has been wrongly

shown by the respondent-Department as 5.11.1965.

11. It is also the grievance of the petitioner that his training period has not been counted towards the qualifying service. As per the GID (1) below Rule 22 of the Pension Rules, the training period can be treated towards qualifying service for pension only if the training is followed immediately by an appointment. In the instant case, this fact is not disputed that the training of the petitioner had completed on 15.8.1965. As per the written statement filed by the respondents to the OA, the petitioner had joined as Postal Assistant on 5.11.1965 whereas the petitioner has alleged that he has joined on 17.8.1965 but the petitioner has not brought on record any material to show his date of joining as 17.8.1965. He has not placed on file copy of the joining report or the relevant extract of the service book to establish his plea. He has drawn our attention to Annexure A8 available at page No. 104 of the paper book. This annexure is not legible. It is pertinent to mention that as per the office note, the Registry has raised the objections time and again that all the relevant documents should be filed in the court language, neatly typed in double space on one side of the legal paper in black ink in accordance with Rule 2 (a) Chapter 1. Part A(a) High Court Rules and Order Volume-V but this objection was not removed by the petitioner and he had again and again refiled the petition without complying with the objection and pleaded to put up the case before the Division Bench on his responsibility. The document Annexure A8 is not legible much less it does not convey that he has joined the post of Postal Assistant on 17.8.1965 as alleged by him. In this way, the training of the petitioner was completed on 15.8.1965 but he joined as Postal Assistant on 5.11.1965 i.e. after a substantial gap from the date of completion of the training whereas GID (1) below Rule 22 of the Pension Rules requires that the pre- appointment training period can only be counted towards pension if the training is followed immediately by an appointment but in the instant case, there was a substantial and long gap between the date of completion of the training i.e. 15.8.1965 and actual date of joining i.e. 5.11.1965. So, the petitioner cannot invoke Rule 22 of the Pension Rules and his training period cannot be treated as qualifying service towards pension.

12. Rule 48-B of the Pension Rules reads as under:

"48-B Weightage in qualifying service for voluntary retirement cases.--A Government servant may retire from service voluntarily with retirement benefits by giving the prescribed notice to the Appointing Authority-

(a) at any time after completion of 30 years'' qualifying service under Rule 48(1) of CCS (Pension) Rules; or

(b) at any time after completing 20 years of qualifying service under Rule 48-A of CCS (Pension) Rules; or

(c) at any time after attaining the age of 55/50 years under FR 56 (k).

In all these cases, the Government servant is eligible for the addition to the qualifying service actually rendered by him up to a maximum of five years subject to the conditions

(i) The total qualifying service after allowing weightage should not exceed thirty-three years;

(ii) The number of years added should not take him beyond the date of superannuation."

13. As per the aforesaid Rule, Government Servant is eligible for addition to the qualifying service actually rendered by him upto a maximum of 5 years subject to the conditions that the total qualifying service after allowing weightage should not exceed 33 years and secondly the number of years added should not take him beyond the date of his superannuation. The date of birth of the applicant is admittedly 25.1.1942 and his date of superannuation was 31.1.2000. The date of his entry in service is 5.11.1965. He voluntarily retired on 28.2.1995. If the petitioner is given the maximum weightage of 5 years in the qualifying service, it will take him beyond his date of superannuation i.e. 31.1.2000 which is not permissible as per condition (ii) of Rule 48-B of the Pension Rules. So, he has been rightly granted the weightage of 4 years and 11 months, which was admissible as per rules. He has served the respondent-Department for a period of 29 years 3 months and 23 days. Out of that the nonqualifying period of 960 days i.e. 2 years 7 months and 20 days with respect to the dies-non and extraordinary leave without medical certificate is to be excluded, the exact service rendered by the petitioner comes to 26 years 8 months and 3 days. After adding the weightage of 4 years and 11 months admissible under the Rule 48-B of the Pension Rules. The total qualifying service of the petitioner comes to 31 years 7 months and 3 days and his pension has been reckoned as per the above period of qualifying service and we do not find any fault in that.

14. The petitioner has also raised the plea that initially in the pension calculation sheet, the rate of his pension was mentioned as Rs. 793/- per month whereas later on in the Pension Payment Order it was reduced to Rs. 786/-. This is purely a question of calculation of the pension which cannot be now raised by the petitioner after the delay of about 20 years of his retirement. This fact is not disputed that earlier he has filed the Original Application No. 535/PB/2008. This ground was available to the petitioner even at the time of filing said OA. The OA No. 1643/PB/2013 has been filed in the year 2013 i.e. after more than 18 years of his retirement. So, this claim/plea of the petitioner is highly belated and stale. Due to this long delay and laches on his part he cannot be allowed to raise this plea at this stage. Consequently, there is no illegality in the pension of the petitioner as calculated by the respondent-Department and he is not entitled to the full pension as claimed by him.

15. Thus, keeping in view our aforesaid discussion, we do not find any legal infirmity in the impugned orders dated 9.9.2014 and 1.12.2014 passed by the learned Tribunal and the action of the respondents.

16. Resultantly, the present writ petition has no merit and the same is hereby dismissed.

