(2003) 03 CAL CK 0003

Calcutta High Court

Case No: W.P.C.T. No. 1092 of 2001

The Garrison Engineer		APPELLANT
	Vs	
Bholanath Sarkar and Others		RESPONDENT

Date of Decision: March 28, 2003

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Civil Procedure Code, 1908 (CPC) - Section 21(1)
- Constitution of India, 1950 - Article 226

Citation: 107 CWN 472

Hon'ble Judges: Joytosh Banerjee, J; A. Chakrabarti, J

Bench: Division Bench

Advocate: Mrinal Kanti Lodh and Rudra Jyoti Bhattacharya, for the Appellant; Achinta Kumar Banerjee, for the Respondent

Final Decision: Allowed

Judgement

Jyotosh Banerjee, J.

In this application under Article 226 Constitution of India, the petitioner, Garrison Engineer, Babina Cantonment has challenged the order dated 18.04.2001 passed by the Central Administrative Tribunal, Calcutta Bench, through which the petitioner and pro-respondents Nos. 2 to 4 were directed to grant Respondent No. 1, the pro-rata pension for the period of 6.3.1943 to 12.3.1962, as a civilian employee of the Defence Department. Admittedly, the respondent No. 1 joined the defence department on 6.3.1943 as a civilian clerk and he applied for a post at Durgapur Steel Plant through Garrison Engineer, Calcutta and on being selected for upper-division Assistant in Durgapur Steel Plant, the respondent No. 1 requested his parent department for granting him lien for 2 years in February, 1962. During that period, respondent No. 1 was on leave and he was transferred to Garrison Engineer, Project No. 2, Babina Cantonment in November, 1961 for which he had to join the

office at Babina Cantonment on 3.2.1962. Thereafter, the respondent No. 1 tendered resignation for the purpose of taking up his new employment at Durgapur Steel Plant and after accepting the said resignation. Garrison Engineer Project No. 2, Babina Cantonment issued a release order dated 12.3.1962 and granted permission to the respondent No. 1 to join his new assignment at Durgapur Steel Plant. In that background, the respondent No. 1 joined the Durgapur Steel Plant on 15.3.1962 and worked at Durgapur Steel Plant till 31.8.1982.

2. Through the instant petition, the petitioner has challenged the order impugned on the ground that the claim of the respondent No. 1 is barred by limitation, that the respondent/applicant was posted lastly under the Garrison Engineer, Babina Cantonment in the State of Uttar Pradesh, wherefrom he resigned from his service and therefore the necessary records are lying beyond the territorial jurisdiction of the learned Tribunal below and therefore the learned Tribunal out the Calcutta Bench had no jurisdiction to adjudicate the dispute, that the learned Tribunal failed to appreciate the exact proposition of law provided in Rule 49 of the C.C.S. (Pension Rules 1972), which also had got no application in the present case as the respondent No. 1 resigned from the service on 12.3.1963, that the application u/s 19 of the Administrative Tribunal Act, 1985 was filed long beyond the limitation period prescribed by the statute itself and finally it is contended that the respondent No. 1 was in employment in the Ministry of Defence for 19 years 6 days and that too only in temporary category for which his service benefits should be governed by Rule 10 of CCS. Temporary Service Rule 1965 and not by Pensions Rules, 1962.

3. So far the contention of the petitioner touching the question of territorial jurisdiction of the Tribunal below, I find on carefully going through the record that such objection was not taken by the petitioner as the respondent before the tribunal below. In fact, the order impugned does not give any impression that the petitioner as the respondent raised objection before the tribunal that in the facts and circumstances of the case it had no jurisdiction to decide the matter. In that background, u/s 21(1) of the CPC such objection should not be allowed to be taken before this court. So far the other question regarding limitation, I find that no attempt was made by the petitioner before the tribunal to show that the application filed by the respondent No. 1 was so filed beyond the period of limitation prescribed by the statute itself. It is to be mentioned here that on giving through the order impugned, I find that such order clearly indicated that the delay was reasonably explained by pointing out the different facts and circumstances, which learned tribunal has considered, in coming to such a conclusion. I need not repeat the same. But I may point out, that in the facts and circumstances, as pointed out by the Tribunal, it has come to a clear conclusion that the delay, if any, has been sufficiently explained and I have no reason, to take a different view.

4. In this background, the only question which awaits my decision in. the proceeding is whether in the facts and circumstances of the case, the respondent No. 1 is

entitled to get the pro-rata pension from the Defence Department as held by the learned Tribunal below? In the instant writ petition, the petitioner Garrison Engineer, Habina Cantonment, has alleged that the Respondent No. 1 was appointed as temporary I. D. Clerk on 6.3.1943 and while he was in temporary appointment, he requested for acceptance of his resignation from service for better appointment in Durgapur Steel Project with effect from 12.3.1962 (A.N.). Since the respondent was in the temporary employment, he would be governed under CC,S. (Temporary Service Rules, 1965). and under Rule 10 of the same, he is entitled to get only the gratuity benefits which the government offered and for which a contingent bill for certain amount was sent to him on 5.8.1997, but the same was returned without any signature of the respondent. It is the specific case of the petitioner that the employee concerned who was in temporary service, was governed under C.C.S. (Temporary Service Rules, 1965) and not by CCS. (Pension Rules of 1972). In the affidavit-in-opposition the contesting respondent has pointed out that in terms of Rule 2 of CCS. (Pension Rules, 1972) no distinction can be made between permanent and temporary employees in the application of Pension Rules. In this way, we find that it is not disputed by the contesting respondent that he was in temporary service at the time of his resignation, but it is claimed that in view of Rule 2 of the Central Civil Services (Pension) Rules, 1972. there is no distinction between the temporary and permanent service holder. The relevant portion of Rule 2 of the Central Civil Service (Pension Rules 1972) runs as follows :
"Save as otherwise provided in these rules, there rules shall apply to government servants including civilian government servants in the Defence, services, appointed, substantively to Civil Services and Posts in connection with the affairs of the Union which are borne on pensionable establishments...."

From above, it is evident that Central Civil Services (Pensions Rules, 1972) apply to those government servants appointed substantively in the Civil or Defence Services (stress is supplied). In the instant case, I do not find anything wherefrom it can be said that the respondent No. 1 was appointed substantively as a civilian clerk in the Defence Department. Admitted position here is that he joined the service in the year 6.3.1943 and he was working as Lower Division Clerk till he joined the post at Durgapur Steel Plant. Since the employee concerned, was appointed for a long period without interruption, and is not appointed for a specified period, in my considered view, the respondent under the circumstances was appointed substantively, and by virtue of Rule 2 of C.C.S. (Pension Rules, 1972). the petitioner is entitled to get the benefit of such rules. Be that as it may, I find from the impugned judgment that the learned Tribunal below came to a finding that the respondent No. 1''s appointment in a public sector undertaking like Durgapur Steel Plant was in public interest, taking into consideration the facts that his parent office allowed him to retain the lien in the post of L.D.C. in that office when the respondent joined the services of Durgapur Steel Plant and he was permitted to hold his lien till such time he was absorbed in the Steel Plant. The learned Tribunal also considered one Office

Memorandum dated 21.4.72 issued by the Department of Personnel, Government of India stating that the permanent Government servants, who have been or are appointed in public sector undertaking on the basis of their applications in response to Press Advertisement, Circular of vacancies etc. and who are absorbed there, that is to say on and from 21.4.1972 on a permanent basis in the undertakings in which they have been so appointed, such government servants will be entitled to same retirement benefits in respect of their past service under the government as are admissible to the permanent government servants on deputation to the public sector undertakings on their permanent absorption therein. The learned tribunal relying on the decision of the Apex Court passed in the case of R.L. Marwaha Vs. Union of India (UOI) and Others, has come to a finding that there is no reason in fixing a particular date as has been done by the Government of India for giving such a benefit and since the respondent was absorbed on 1.12.1962 that is to say prior to 21.4.1972 such benefits cannot be denied to him. In this connection, before I proceed further I must note down that the decisions on which the learned Tribunal has placed it''s reliance in coming to such a conclusion and the decisions which have been referred to by the learned Advocate for the respondent in course of his argument, namely, R.L. Marwaha vs. Union of India & Ors., (1987) 4 SCS 31 R.K. Gupta vs. Union of India & Ors.. 1988 (Supp.) SCS 501. strictly speaking are not applicable in the facts and circumstances of the present case. In both the cases, the question was whether the past service should be counted towards pension. In the case of R.L. Marwaha (supra), the Apex Court has noted that in case an employee of the Central Autonomous Body moving to another Central Autonomous Body and in case of such bodies contain pension scheme which is in operation, the service rendered by an employee under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. In the instant case, the question is whether the respondent is entitled to get prorata pension and there is no question of augmentation of pension by counting his past service as admittedly, the petitioner was not entitled to get any pension from the Durgapur Steel as at the time of his retirement -no such pension scheme was not in operation. In my considered opinion, the learned Tribunal has failed to decide the question in issue by taking into consideration, the relevant Rules of the Central Civil Services (Pension) Rules, 1072 hereinafter be referred to as the Rules. Rule 26 of such Rules will be relevant in deciding the question. Relevant portion of Rule 26 reads as follows:

"Forfeiture of service on resignation,-(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(4) The appointing authority may permit a person to withdraw his resignation in public interest on the following conditions, namely :

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation:

ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

iii) that the period of absence from duty between the date of which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than 90 days;

iv) that the post which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available."

5. From the aforesaid Rule, it is clear that resignation from a service entails forfeiture of past service unless the same is allowed to be withdrawn in the public interest by the appointing authority. There is no allegation that after the respondent submitted his resignation to join his post at Durgapur Steel, the respondent made any attempt to withdraw the same and the appointing authority in the Defence Department allowed such prayer in the public interest. In this connection, I must once again repeat that the public interest cannot be presumed on the basis of certain facts and circumstances. The relevant Rules clearly indicate that appointing authority concerned may allow the employee to withdraw the resignation in public interest. Sub-Rule (4) of Rule 26 further indicates that the appointing authority can permit the employee to withdraw his resignation in public interest on certain conditions as laid down there. Sub-Rule (2) of the said Rule 26 provides for that a resignation shall not entail forfeiture of past service if it has been submitted to take up another appointment under the Government where service qualifies. In Sub-Rule (1) of Rule 3 of the said Pension Rules of 1972, the expression ''Government'' has been defined as meaning the Central Government. In such circumstances, when admittedly the petitioner after resignation did not join Central Government, he is not entitled to the benefit of Sub-Rule (2) of Rule 26.

6. Before I part with the matter, it is to be mentioned that in a recent case, namely, Union of India and Others Vs. Dr. Vijayapurapu Subbayamma, , the Apex Court noted when the employee retired under the relevant rules, he was not entitled to get pension as the qualifying service was reduced to ten years from twenty years subsequently. Here, I have also seen that the employee concerned at the relevant point of time when he resigned, was not entitled to get the pension as the service rendered by him was less than twenty years.

7. The application, therefore, should be allowed. The impugned judgment of the Tribunal below should be set aside and O. A. No. 999 of 1987 filed by the respondent should be dismissed. In the result, the writ application is allowed. Impugned judgment of the Tribunal below is set aside and O. A. No. 999 of 1987 filed by the respondent there, is dismissed. No costs.

A. Chakrabarti, J.

I agree.