

(2008) 12 DEL CK 0188

Delhi High Court

Case No: Writ Petition (Civil) No"s. 8863-65 of 2006

Union of India (UOI)

APPELLANT

Vs

Sh. Mohan Kainth

RESPONDENT

Date of Decision: Dec. 8, 2008

Acts Referred:

- Central Civil Services (Pension) Rules, 1972 - Rule 48A, 48B, 48B(1)
- Civil Service Regulations - Article 459

Hon'ble Judges: Suresh Kait, J; Madan B. Lokur, J

Bench: Division Bench

Advocate: R.V.Sinha, for the Appellant; Praveen Marahatta, for the Respondent

Final Decision: Allowed

Judgement

Suresh Kait, J.

The present petition is directed against the order dated 31st August, 2005, in OA No. 1139/2004 passed by the Central Administrative Tribunal, Principal Bench, New Delhi.

1. The Petitioner, being aggrieved by the aforesaid order, has challenged it mainly on two grounds; (i) whether or not Rule 48-B of CCS (Pension) Rules, 1972, which was made operative with effect from 10th September, 1983, is prospective in nature, (ii) whether or not the Tribunal failed to appreciate the judgment of this the Supreme Court in Union of India and Ors. v. Dr. Vijayapurapu Subayamma JT 2000 (Supp.1) SC 41 and [V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another](#),

2. The case of the Respondent herein before the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 1139/2004 was for directions, to the Petitioners herein, to refix the pension of the Respondent correctly on the date of his voluntary retirement on 28th February, 1983, and accord him benefit of Rule-48

B(I) of the CCS (Pension) Rules, 1972 (the Rules). And refix his pension as on 1st September, 1983, by increasing the Respondent's qualifying service from 1st September, 1983, for pension, by 5 years as per the said Rule. And, thereafter, grant all consequential benefits in pension, gratuity, leave salary etc. with subsequent revision of pension w.e.f. 1st January, 1986, and 1st January, 1996, as per the recommendations of the 4th Pay Commission and 5th Pay Commission, respectively.

3. The stand of the Petitioner, (herein) was that the Respondent joined the Town Planning Organization, now known as Town and Country Planning Organization, on 27th December, 1955, as Town Planning Officer Grade-III. In 1968, he was promoted to the post of Associate Town and Country Planner in the scale of Rs. 700-1300, basic pay fixed at Rs. 900/- per month after adding 5 advance increments. He was promoted as Additional Town and Country Planner, in the pay scale of Rs. 1300-1700, in April, 1977, further, to the post of Architect Planner in the scale of Rs. 1500-2000, on ad hoc basis. His pay as Architect Planner was fixed at Rs. 1680/- per month, vide order dated 19th November, 1979. The Respondent joined Noida as Chief Town and Country Planner, on deputation basis on 28th February, 1981. He sought and was granted voluntary retirement with effect from 28th February, 1983, under Rule 56(k) of Fundamental Rules. But for proceeding on deputation to Noida, his pay in the parent office as Architect Planner would have been Rs. 1900/- per month and the qualifying service of 32 years 2 months and 5 days on 28.2.1983. He was erroneously deprived of the advantage of 5 years increase in the qualifying service permissible under Rule 48-B of the Rules.

4. It is stated that Rule 48-A(3) was substituted by Rule 48-B with effect from 26th August, 1983. In substituted Rule 48-B, 5 years increase in the qualifying service were required to be added for calculating pension. The claim of the Respondent was that the Petitioner should have been paid pension of Rs. 985/- per month, with effect from 1st September, 1983, instead of paying pension of Rs. 780/- per month.

5. The Petitioner had taken the preliminary objection of delay and laches before the Central Administrative Tribunal that the first representation made by the Respondent for revision of his pension was on 12th February, 1999, i.e. 16 years after his voluntary retirement in 1983, and that about 26 years, after the Rule was substituted. Also on merit, stated that the Respondent was holding lien on the post of Associate Town and Country Planner while on deputation to Noida. Keeping in view, his promotion to the post of Additional Town and Country Planner, Architect Planner or even the Associate Town and Country Planner, his pension was as per Rule calculated and on basis of his emoluments which he had been drawing as per Rule at the time of retirement in 1983; and on the basis of his substantive post of Associate Town and Country Planner on which he was holding the lien. Learned Counsel for the Petitioner further submitted that the Respondent was not eligible to the benefit increase of 5 years in his qualifying service of pension; Rule 48-B(I) was prospective in nature, and came into force with effect from 10th September, 1983,

i.e. much after the Respondent had retired from service on 1st March, 1983.

6. The learned Counsel for the Petitioner, further submitted that as regards the mentioning in certain documents of the designation of the Respondent as Architect Planner, it was clarified, there was an inadvertent mistake, accordingly, on 11th August, 1998, the Respondent's pension was revised on the basis of the papers supplied by him. Since relevant record was not available. Later on, when the documents revealed the true position, the pension was revised accordingly. It was further stated that the documents submitted including the service book of two officers namely Shri G.D.Mathur and Shri R.C.Mathur would show that during the period of July, 1981, to the date of voluntary retirement of the Respondent i.e. 28th February, 1983, these officers were holding the post of Architect Planner on ad hoc basis.

7. Undisputedly, the Respondent had sought voluntary retirement from service with effect from 28th February, 1983. In that case, firstly, what was to be considered i.e. the last emoluments drawn by the Respondent at the relevant time. Secondly, whether the Respondent was entitled to refixation of his pay with effect from 1st October, 1983, after taking into account the benefit of five years, the additional qualifying service in accordance with Rule 48-B(1) of Rules. If the quantum of his emoluments last drawn and the total qualifying service are determined, the rest consequences would automatically follow. It was also not disputed that the Respondent was promoted to the post of Associate Town and Country Planner in the scale of Rs. 700-1300 in the year 1968, promoted to the post of Additional Town and Country Planner in the year 1977, further promoted to the post of Architect Planner on ad hoc basis in the scale of Rs. 1500-2000 on 10th October, 1979. The Respondent proceeded on deputation to Noida, as Chief and Town Country Planner on 28th February, 1981, from where he sought voluntary retirement with effect from 28th February, 1983. The above both posts were on ad hoc basis and he was never appointed on regular basis. It is also clear that at the time of his voluntary retirement, he had no lien on the post of Architect Planner, since was on deputation. Office Order dated 28th February, 1981 (at page 124 of this writ petition) clarify that lien of the Respondent was for a year only, that is from 28th February, 1981 to 27th February, 1982 while on deputation, within India. Note-II appended to para 5 of Appendix 5 of the Fundamental Rules, provided as under:

Note-2 An officer who may be holding a higher post on ad hoc basis in the cadre at the time of proceeding on deputation/foreign service would be considered to have vacated the post held, on ad hoc basis and proceeded on deputation/foreign service from his regular post. During his deputation/foreign service, he shall earn national increments in his regular post only. On his revision, if he is reappointed to the higher post on regular or ad hoc basis, his pay will get fixed with reference to the pay get fixed with reference to the pay admissible in the lower post as on date of promotion. In such cases, if his pay gets fixed at a stage lower than this of his

junior(s) who continue to serve in the cadre, no stepping up will be admissible as per extant rules in so far as Central Government employees are concerned. However, if the pay so fixed is less than the pay drawn earlier while holding the post on ad hoc basis, the pay earlier drawn will be protected. Therefore, those Central Government employees who are already holding a higher post on ad hoc basis or expecting it shortly in the parent cadre may weigh all relevant considerations before opting for deputation/foreign service. This note of caution will be applicable to employees of other organizations wishing to apply for posts on deputation in Central Government if governed by similar rules in parent organizations.

8. As per the aforesaid Rule, the Respondent, deemed to have been vacated the post of Architect Planner, when he was proceeded on deputation to Noida. Accordingly, pay was fixed at Rs. 1680/- per month with effect from 10th October, 1979 vide order dated 9th October, 1980.

9. As regards the two officers, one Shri G.D.Mathur who was appointed as Architect Planner on ad hoc basis with effect from 20th July, 1981, and was regularly appointed as Architect Planner on 23rd February, 1982, whereas, R.C.Gupta was appointed as Architect Planner on ad hoc basis with effect from 23rd February, 1982. It proves that the Respondent was Associate and Town Country Planner, when he proceeded on deputation.

10. We have observed that the Respondent, never came back and worked on the post of Architect Planner even on ad hoc basis before his retirement on 28th February, 1983. As a result, his last emoluments could not be fixed on the basis of the emoluments which he drew while working as ad hoc Planner before he proceeded on deputation to Noida. It is settled law that the last drawn pay would be on the basis of notional pay, which the Respondent had drawn on the post of Associate Town and Country Planner, in which, he had lien till his retirement on 28th February, 1983, with notional increase of increments and corresponding allowances etc.

11. We found no fault, in the order of the Petitioner, in fixing the pension on the basis of emoluments which the Respondent had drawn on the post of Associate Town and Country Planner, on the date of the retirement. The controversy now remained, which is before us also, that grant of benefit of Rule 48-B of Rules. The Rules are reproduced as under :

48-B . Addition to qualifying service on voluntary retirement.

(i) The qualifying service as on the date of intended retirement of the Government Servant retiring under Rules 48(1) (a) or Rule 48-A or clause (k) of Rule 56 of the Fundamental Rules or clause (i) of Article 459 of the Civil Service Regulations, with or without permission, shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty three years and it does not

take him beyond the date of superannuation.

(2) The weightage of five years under Sub-rule (1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48(1) of FR 56(j).

12. The aforesaid Rule was added vide Notification dated 26th August, 1983. Therefore, the Respondent was entitled to the benefit of the pension in qualifying service in revision of his pay with effect from 10th September, 1983. The Petitioner has relied upon the judgment of the Hon"ble Supreme Court, in the case of Union of India and Ors. v. Dr. Vijayapurapu Subbayamma JT 2000 (Supp.1) SC 41. The Hon"ble Supreme Court, considered the question, whether, the pensioner was eligible to the benefit conferred on the pensioners by amendment of the Pension Rules, which had prospective in nature, came into fore after the pensioner had retired. After examining the judgments in [V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another](#), , Commander Head Quarter, Calcutta and Ors. v. Capt. Biplabendra Chand JT 1996(12) SC 242, [Union of India \(UOI\) and Others Vs. Lieut \(Mrs\) E. Iacats](#), and [Tamil Nadu Electricity Board Vs. R. Veeraswamy and Ors.](#), the principles of law summed up were, as follows:

The conspectus of legal position that emerges from the aforesaid decisions are as under :

(a) Where an employee under the terms and conditions of service or under the relevant Rules relating to pension is not eligible to earn pension on his or her retirement, any amendment to the Rules covering a new class if pensioners would not confer pensionary benefits to the employee who has retired prior to coming into force of such amendment of Rules.

(b) However, the position would be different if such an amendment in the relevant pension Rules is with retrospective effect as to cover a new class of employees including those employees who, at the relevant time, were not entitled to earn pension under the then existing Rules conditions of service.

(c) Where an employee at the time of retirement is entitled to pension under the relevant Rules, any subsequent amendment to the relevant Rules enhancing pension or conferring additional benefit would be also application to him.

13. We are of the considered opinion that the Respondent would be eligible for revision of his pension with effect from 10th September, 1983 by counting his total qualifying service taking into the benefit of Rule 48-B of Rules mentioned above. The Central Administrative Tribunal, has rejected the contention of the Petitioners, on delay and laches. We are also agreed by the view taken by the Hon"ble Supreme Court in the case of [State of Haryana and another Vs. Jagdish Chander](#), that the claim of arrear and other consequential benefits may be resisted barred of limitation, delay and laches. We have observed the Rule 48-B of 1972 is perfectly

applied by the Petitioners and the Respondent is definitely not entitled to refix the pension with effect from 1st September, 1983, since he retired on 28th February, 1983, much before the Rule substituted. We are not agreed with the order passed by the Central Administrative Tribunal. We, hereby, set aside the order dated 21st August, 2005 in OA No. 1139/2004. We allow the writ petition, accordingly. No costs.