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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 20.08.2014

% **W.P.(C) 5066/2014 and C.M. Nos.10107-08/2014**

UNION OF INDIA AND ANR

..... Petitioners

Through: Mr. Saqib, Advocate.

versus

DR. S.D. PRADHAN

..... Respondent

Through: Mr. Sanjay Parikh & Ms. N. Vidya,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The Union of India (UI) has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 21.10.2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.2250/2012, preferred by the respondent, whereby the Tribunal has allowed the respondent/ applicant's claim for revision of his pension in terms of office memorandum dated 10.12.2009, and consequently, the Tribunal has quashed the order dated 08.05.2012 issued by the Government of India, whereby the respondent's claim for upward revision of pension was rejected. The Tribunal has held that the respondent was entitled to draw pension at 50% of the last pay drawn with

effect from 29.02.2008, and consequently, the petitioners have been directed to pay the arrears to the respondent with interest at the rate admissible to the GPF from the due date.

2. In brief, the facts are that the respondent joined Punjabi University, Patiala (hereinafter referred to as 'University') as Lecturer on 12.08.1970 and was subsequently promoted as Reader. On 24.03.1984, the respondent was appointed as Joint Editor in the Ministry of Defence (hereinafter referred to as 'MoD') on deputation basis in the pay scale of Rs.3700-5700 for a period of two years. The said deputation was extended from time to time.

3. On 29.06.1989, the respondent joined as Director/ Deputy Secretary with the National Security Council Secretariat (NSCS), which had borrowed the respondent's services from MoD. On 01.07.1991, the NSCS requested the University for extension of the period of the respondent's deputation beyond June 1991, which was declined. Consequently, the respondent took premature retirement from the University with effect from the same date. Accordingly, the University reckoned the services of the respondent for the purpose of post retiral benefits from 12.08.1970 to 30.06.1991.

4. It is not in dispute that initially the respondent was covered by the Contributory Provident Fund (CPF) Scheme of the University. However, later on, a pension scheme was made applicable on 01.01.1996 by the University with retrospective effect. It is not in dispute that, consequently, the respondent also got covered by the said pension scheme. He was

granted pension at Rs.1,639/- per month, which was subsequently revised to Rs.4,400/- per month.

5. The respondent was absorbed in the organization of NSCS as Joint Secretary in the pay scale of Rs.18,400 - 22,400 with effect from 07.06.2001. On 18.06.2001, his services – which had till then been on contract basis, were regularized with the representation that he would be entitled to the benefit of past service, as admissible under Rule 17 of the Central Civil Services (Pension) Rules, 1972 (the Pension Rules), which is reproduced a little later in this order. The respondent was assured that he was entitled to retention of pensionary benefits for past service as per paragraph 5(1) of the O.M. dated 29.08.1984, and that his past contract service – prior to his regularization (i.e. with effect from 01.07.1991) would be reckoned for the said purpose. Paragraph 5(1) of the O.M. dated 29.08.1984 is extracted a little later.

6. The respondent was promoted to the rank of Additional Secretary in NSCS, and thereafter, was appointed as Chairman, Joint Intelligence Committee in the rank and pay of Secretary to the Government of India for a period of two years on 27.02.2006, wherefrom he retired on 29.02.2008.

7. The respondent's pension was fixed and was revised with effect from 01.03.2008 to basic pension of Rs.25,455/-. On 10.12.2009, the Government of India – in modification of its earlier office memorandum, decided that the full pension would be delinked from the qualifying service of 33 years with effect from 01.01.2006, instead of 02.09.2008.

8. The respondent made a representation for revision of his pension in accordance with the O.M. dated 10.12.2009, which was denied by the petitioner vide its order dated 08.05.2012 on the ground that none other than re-employed ex-servicemen were allowed, the second pension under Rule 7(2) of the Pension Rules, which reads as follows:

“Except as provided in Rule 19, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment”.

9. The stand taken by the petitioner was that all those in receipt of pension/ pensionary benefits, or even CPF benefits, were considered to be re-employed pensioners, except those who retired under Rule 18 of the Pension Rules on invalid pension, or gratuity, or on compassionate pension. The petitioner further took the stand that the appointing authority has ignored the express provision of the Pension Rules that unless the grant of the second pension is actually regularized by relaxing the provision of Rule 7(2) of the Pension Rules with the approval of the Secretary to the Administrative Department, it would remain irregular.

10. Consequently, the respondent preferred the aforesaid Original Application before the Tribunal. The claim of the respondent applicant was contested by the petitioner, whereafter the Tribunal crystallized the issues which arose for consideration. The first and the most important issue framed by the Tribunal was: Whether the respondent's was the case of re-employment or absorption? The Tribunal also framed issues as to whether the provision of Rule 7(2) of the Pension Rules will be applicable to the

facts of this case; and, whether the petitioners were first precluded by estoppel from re-opening the case after determination of the respondents pension in the year 2008.

11. The Tribunal answered the first issue in favour of the respondent as follows:

“7. In so far as the issue no.1 is concerned, it is an admitted position that the applicant was employed from 12.08.1970 to 30.06.1991 with Punjabi University as Lecturer and later promoted to the post of Reader. It is further admitted that Ministry of Defence availed of the services of the applicant, and that in 1991, the respondent no.1 had requested the University to extend the period of deputation of the applicant beyond 1991 to which the University did not agree. As a result of this, the applicant took voluntary retirement. At the time of the voluntary retirement, the University was governed by the Contributory Provident Fund Scheme (hereinafter referred to as CPF). Pensionary benefits Scheme was introduced w.e.f. 01.01.1996 and the same was made applicable to all the pensioners including the applicant, who was granted the pension at Rs. 1639/- per month which was later revised to Rs.4400/- per month. It is also a matter of fact that the services of the applicant were initially on contract basis and were regularized on 18.06.2001. Subsequently, the applicant retired as Chairman of the Joint Intelligence Committee in the rank of Joint Secretary on 29.02.2008 after having served for a period of two years. In this regard, it is necessary to look at the order of absorption, communicated vide order dated 18.06.2001, which reads a under:-

“Consequent upon his absorption in the National Security Council Secretariat (vide DOP&T OM No.15/8/2001-EO (SM-II) dated 7.6.2001), the President is pleased to appoint Dr. S.D. Pradhan as Joint Secretary in the pay scale of

Rs.18,400-22,400/- with effect from the forenoon of 7th June, 2001 until further orders.

Dr. S.D. Pradhan will be entitled to the benefit of past service admissible under Rule 17 of CCS (Pension) Rules.”

8. *It appears from the perusal of the above that there was a reference regarding counting of service admissible under Rule 17 of the Pension Rules in respect of the applicant. However, for the sake of better illustration, Rule 17 is being reproduced as follows:-*

“17. Counting of service on contract

(1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable establishment without interruption of duty, may opt either -

(a) to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service; or

(b) to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable.

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Government servant is on leave on that day,

within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2), the government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract.”

9. It appears from the above that there are two routes open for a person who has been absorbed after having served for a certain period on contract basis. In the first instance, he may retain contribution in the CPF. Alternatively such employee may agree to refund to the government the monetary benefits received by him with interest thereon or to forgo the same and count the service for which the aforesaid monetary benefits were payable or paid. This option is to be communicated to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable establishment. Here in this case, it is an admitted fact that the CPF contributions were not drawn by the applicant as is evident from the note dated 29.06.2001 (Annexure A-3) which states that “Dr. S.D. Pradhan has not received CPF or any other terminal benefits from the Government for the period he served on contract in JIC/NSCS and he has desired to forego the benefits to count in lieu thereof the service rendered since 1.7.91.” The respondent no.1 in its note dated 14.08.2001, submitted for re-consideration, has placed reliance on para 5(1) of DP&AR’s OM 28.09.1984, wherein it has been provided as under:-

“5(1) The employees of a Central Autonomous Body or Central Government, as the case may be, who have already been sanctioned or have received pro rata retirement benefits or other terminal benefits for their past service will have the option either -

- (a) *to retain such benefits and in that event their past service will not qualify for pension under the Autonomous Body or the Central Government, as the case may be; or*
- (b) *to have the past service counted as qualifying service for pension under the new organization in which case the pro rata retirement or other terminal benefits, if already received by them, will have to be deposited along with interest thereon from the date of receipt of those benefits till the date of deposit with the Autonomous Body or the Central government, as the case may be. The right to count previous service as qualifying service shall not revive until the whole amount has been refunded. In other cases where pro rata retirement benefits have already been sanctioned but have not yet become payable, the concerned authorities shall cancel the sanction as soon as the individual concerned opts for counting of his previous service for pension and inform the individual in writing about accepting his option and cancellation of the sanction. The option shall be exercised within a period of one year from the date of issue of these orders. If no option is exercised by such employees within the prescribed time-limit, they will be deemed to have opted for retention of the benefits already received by them. The option once exercised shall be final.”*

10. *These facts were taken into consideration by the Department of Pension & PW which re-considered its earlier decision and held as under:-*

“5. On reconsideration of the case it has been observed that Dr. Pradhan has been appointed on regular basis as Joint Secretary in NSCS on 7-6-2001. Under Rule 17 of CCS (P) Rules, he will become eligible w.e.f. the date of substantive

appointment, for counting of past contract service rendered in NSCS w.e.f. 1-7-1991 prior to regular appointment in Government Service. It may be seen from the Provident Fund Statement placed in the file that it contains element of government contribution to the tune of Rs.105889/-. Cabinet Secretariat may ensure that above amount of Government Contribution alongwith interest, may be transferred to Government accounts on counting of contract service at the time of substantive appointment.”

11. The bar imposed under Rule 2(g) that the Pension Rules will not apply to persons employed on contract, except when the contract provides otherwise, is not applicable to the facts of the instant case. It is also a fact that the applicant's request to consider adding of his past service with his erstwhile employer i.e. the Punjabi University to that in NSCS was declined. It was decided that once the applicant has exercised his option for retention of the monetary benefits qua the past service, it could not be counted towards the Government Service for the purpose of pension.

12. I further take note of the fact that the Punjabi University is an Autonomous Body and is governed by different sets of rules. There was no Pension scheme in the year 1991 when the applicant took voluntary retirement but the same was introduced subsequently in the year 1996 with retrospective effect. Assuming, had the Pension Scheme not been introduced or it had not been given retrospective effect, the applicant would not have received pension and would have had to remain contented with the CPF. Thus, I find substance in the argument of the applicant that his initial employment with the Ministry of Defence and subsequently with the NSCS – respondent no.1 was not a re-employment but altogether a new employment in an organization having different hierarchy, different promotional rules and different establishment. Thus, this issue is answered in favour of the applicant.”

12. The Tribunal, thus, concluded that the initial appointment of the respondent with the MoD and subsequently with NSCS, was not a re-employment, but an altogether new employment in an organization having a different hierarchy and different promotional rules and different establishment.

13. The Tribunal then went on to hold that since the respondent's was not a case of re-employment, Rule 7(2) of the Pension Rules would not be attracted since the said Rule is attracted only in the case of re-employment. The Tribunal held that the respondent's case was covered by Rule 17(1) as the respondent fulfilled the conditions laid down under the said Rule. On the said issue, the Tribunal observed as follows:

"13. Now I take up the second issue. It has already been covered while dealing with issue no.1. The answer is very simple in this respect that once it has been decided in respect of issue no.1 that the employment of the applicant with Ministry of Defence and subsequently with the respondent no.1 was not a case of re-employment, it is obvious that the provision of Rule 7(2) will not apply to the facts of the instant case as it is only applicable to a case of re-employment. The provision of Rule 19 of the Pension Rules will also not apply to the case of the applicant as he is not the military personnel. To the contrary, I find that the provision of Rule 17(1) will apply as the applicant fulfills the conditions laid down under these rules. The applicant was admittedly engaged by the Government on deputation in the year 1984. Subsequent to his taking voluntary retirement in the year 1991 he was engaged on contract basis. Thus it is not that the employment of the applicant with the Ministry of Defence and with respondent no.1 was something that has taken place after his voluntary retirement. It was in fact continuing well before the period of voluntary retirement. I also take into consideration the fact that during the period of

contract employment, the applicant had been given several promotions. In this respect, the contract employment was as good as the regular employment. As has already been discussed above, at the time of absorption, the applicant had not taken the monetary benefit for his contract period of employment. Under these circumstances, there is full application of Rule 17 of the Pension Rules. This question is accordingly answered in favour of the applicant.”

14. The Tribunal also held that the petitioner was precluded from re-opening the basis on which the respondent's pension had been fixed. Since the petitioner itself had stipulated at the time of the respondent's absorption that his services rendered on contract basis will be admissible under Rule 17 of the Pension Rules, and the same would be included for all purposes, including for computation of pension, the petitioner could not resile from that representation. Upon the respondent's superannuation, he was granted pension vide O.M. dated 23.04.2008. The petitioners had calculated the respondents period of qualifying service as 20 years and 10 months, i.e. 16 years and 8 months (between 01.07.1991 to 29.02.2008) with the petitioner plus weightage of 4 years and 2 months for his service rendered with the University. Admittedly, the respondent's pension had been revised with effect from 01.03.2008 vide order dated 06.02.2009. The Tribunal also took note of the noting made in the order dated 06.02.2009 to the following effect:

“For post 2006 Pensioners’, only 40% of pension amount may be paid in 2008-2009 and revised Gratuity/Commutation amount, wherever applicable, should be paid in full (100%).”

15. It also took note of the fact that vide O.M. dated 02.09.2008, the linkage of full pension with 33 years of qualifying service had been

dispensed with, and a Government servant who has rendered the minimum qualifying service of 20 years would be entitled to pension at 50% of the emoluments, or average emoluments received during the last 10 months, whichever is more beneficial to him. The pension of the respondent had already been revised vide O.M. dated 06.02.2009. Consequently, the Tribunal concluded that the petitioner could not have re-visited the basis for fixation of the respondents pension, which had been determined in the year 2008.

16. The Tribunal also took note of Rule 49 of the Pension Rules and observed that the said provision did not come in the way of the respondent in drawing enhanced pension at 50% of the last pay drawn with effect from 29.02.2008.

17. The submission of Mr. Saqib, learned counsel for the petitioners is that since the provision of Rule 7(2) of the Pension Rules had not been relaxed in the respondents case, the sanction of the second pension was irregular. He further submits that such relaxation was subject to the restriction of the amount of the second pension as per Rule 18(3) of the Pension Rules at all times. Mr. Saqib relied on Rule 7(2) of the Pension Rules to submit that those in receipt of retiring pension on voluntary retirement would not be eligible for further pension/ gratuity on re-employment under the Pension Rules.

18. He submits that the respondent's was a case of re-employment and that the Tribunal erred in holding that the same was a case of fresh employment and not re-employment. He submits that since the respondent

was not an ex-serviceman, under Rule 19 of the Pension Rules, he was not entitled to the second pension by virtue of Rule 7(2) of the Pension Rules.

19. He further submits that since all those in receipt of pension/ pensionary benefits, or even CPF benefits – whether from the Government of India, or State Government, or Government of Union Territory, or Public Sector Undertakings, or Autonomous Bodies, are considered to be re-employed pensioners, except cases covered under Rule 18 of the Pension Rules – in case of those retired on invalid pension, or gratuity, or compassionate pension. No retired civil employee is entitled to be paid even gratuity, much less pension on re-employment.

20. He further submits that pension in case of absorption is governed by Rule 37 where no additions to qualifying service are permitted. Thus, it was not possible for the respondent to be “absorbed” in the Government as per Pension Rules. He submits that the appointing authority, as well as the pension sanctioning authority, had ignored the express provisions of the Pension Rules in the case of the respondent and that there was no estoppel against the law.

21. On the other hand, learned counsel for the respondent, who has appeared on advance notice, has opposed the petition and supported the order passed by the Tribunal.

22. The submission of Mr. Parikh is that the petitioner had itself treated the date of the respondent’s appointment as 01.07.1991 and the date of retirement as 29.02.2008, thus, computing the length of the respondent’s service as 20 years and 10 months. At the time of respondent’s voluntary

retirement from the University, the pension scheme was not even in force in the said University. The same was made applicable with retrospective effect, for the first time, on 01.01.1996. It was only on that account that the respondent came to be covered by the pension scheme of the University.

23. He further submits that the respondent's request for adding of his past service with the erstwhile employer, i.e. the University to the service rendered with the NSCS, was declined.

24. Having heard learned counsel for the parties, we are of the view that there is no merit in this petition and there is no error pointed out by the petitioners in the impugned order of the Tribunal which calls for interference by this Court. Pertinently, the past service of the respondent with the University was not permitted to be counted by the petitioner. The respondent was, however, given benefit of Rule 30 of the Pension Rules and the period to be added to the service of the respondent with the petitioner was computed as 4 years and 2 months, i.e. 42 six monthly periods of service. It is not the petitioners' case that Rule 30 was not applicable in the case of the respondent. Having itself computed the length of the respondent's total service as 20 years and 10 months, without even adding the service of the respondent with the University, it is not open to the petitioner to now contend that the service of the respondent with the petitioner was less than 20 years.

25. We also find that there is no bar to the respondent drawing two pensions in the facts of the present case. The fact that the respondent fortuitously came to draw pension from the University on account of

retrospective application of the pension scheme much after the date of the respondent's voluntary retirement from the said University, in place of the CPF benefit to which he was entitled, cannot deprive him of the pension to which he is entitled under the Pension Rules, since the length of his service rendered with the petitioner has been computed to be in excess of 20 years.

26. The Tribunal has rightly concluded that the respondent's was not a case of re-employment. Rather it was a case of fresh employment since the petitioners declined to count the respondent's service with the University for the purpose of pension, and the respondent took voluntary retirement from University, whereupon he was absorbed by the petitioners.

27. For the above reasons, we are of the opinion that there is no merit in the writ petition. The same is, accordingly, dismissed. The petitioners are directed to ensure that the differential of pension and other dues as well as the interest directed by the Tribunal are disbursed within four weeks from today.

28. Order Dasti under the signature of the Court Master.

VIPIN SANGHI, J.

S. RAVINDRA BHAT, J

AUGUST 20, 2014

B.S. Rohella