

respondents to count his service for the grant of pensionary benefits.

It is the uncontroverted position that the cause of action with regard to forfeiture of his service took place in the year 1973 and the present petition has been filed in the year 2013 i.e. after 30 years without any explanation for the delay.

Even otherwise, the claim of the petitioner cannot be accepted in view of the provisions contained in Rule 4.19 of the Rules, which provides as under :-

“4.19 (a) Resignation from public service, dismissal or removal from it, either under proviso (c) to Article 311(2) of the Constitution for over anti-national activities such as sabotage, espionage etc. or for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination, entails forfeiture of past service and no pension shall be granted in the aforementioned circumstances.

Provided that in the case of those Government employees whose removal or dismissal results from participation in other objectionable activities affecting or endangering the security of the State, such proportionate pension may be granted as may be recommended by the Committee of the Advisors constituted under the Haryana Civil Services (Safe-guarding of National Security) Rules, 1971.

(b) Resignation of an appointment to take

up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In cases where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government employee on the date of relief or by formal condonation under Rule 4.23 to the extent to which the period is not covered by leave due to the Government employee.

***Note.**— The previous service of a Government employee who is transferred to a temporary appointment is forfeited by his resigning the temporary appointment and taking up another temporary appointment of his own accord.”*

The aforesaid opinion formed by me finds support from a judgment of the Apex Court in **Ghanshyam Dass Relhan vs. State of Haryana and others – 2009 (14) SCC 506**, wherein, while interpreting Rule 4.19(a) of the Rules, it has been held as under :-

“16. *In our view, Rule 4.19(a) has to be read and understood differently from what has been urged by Mr. Dholakia. The expression ‘resignation from public service’*

will have to be read disjunctively from 'dismissal or removal from it'. The expression 'resignation from public service' will not be qualified by the subsequent references relating to anti-national activities. On the other hand, the expression 'dismissal or removal from it' will be qualified by the said expression which would in both cases entail forfeiture of past service and disqualification so far as payment of pension is concerned. In other words, read disjunctively, resignation simpliciter from public service would entail forfeiture of past service and no pension is to be granted in the aforesaid circumstances."

The reliance by the counsel for the petitioner on Rule 6.16 (2) of the Rules is misconceived. Rule 6.16 (2) of the Rules is reproduced below :-

“6.16(2) *In the case of a Government employee retiring on or after the 1st April 1979, in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years or more, the amount of superannuation, retiring, invalid and compassionate pensions shall be 50% of average emoluments as defined in Rule 6.19-C of these rules subject to a maximum of (Rs.3000/-)(Substituted vide No.1/2/1/CSR*

Vol.II/91-Sr.AO(FD) dated 31.1.92) per mensem. However, in the case of a Government employee who at the time of retirement has rendered qualifying service of ten years or more but less than thirty three years, the amount of pension shall be such portion of the maximum admissible pension as such the qualifying service of thirty three years, subject to a maximum of (Rs.375/-) (Substituted vide No.1/2/1/CSR.Vol.II/91-Sr.A.O.(FD) Dated 31.1.92) per mensem...”

A perusal of the above quoted Rule shows that the same applies to retirement upon superannuation and not resignation, as in the case in hand. Rule 6.16(2) of the Rules has also been interpreted in **Ghanshyam Dass Relhan's** case (*supra*) as under :-

“18. *As far as Rule 6.16(2) is concerned, in our view, the same cannot be divided into two separate compartments as has been suggested by Mr. Dholakia. The second part of the said Rule is a consequence of the first part, which deals with retirement upon superannuation and not resignation, as in the instant case. In order to be eligible for pension the Government employee at the time of superannuation would have to complete qualifying service of not less than 33 years or more. However, an exception has been made in the second part of the said Rule*

which also allows the benefit of pro- rata pension to employees who had rendered 10 years service or more. In our view, not having superannuated from government service, the petitioner cannot come within the said category and as submitted by Mr. Patwalia, his case would instead be governed by Rule 5.32-A, which deals with resignation.”

In view of the aforesaid facts and the position of law, the present petition deserves to be dismissed, both – on the ground of delay and laches, as also on merits.

Ordered accordingly.

(DEEPAK SIBAL)
JUDGE

December 01, 2015

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