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

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Date of Decision: 25.07.2019

% **W.P.(C.) No. 11637/2018**

ROOP CHAND

..... Petitioner

Through: Mr. Chetan Lokur with Mr. Nitish Chaudhary, advs. With petitioner in person.

versus

UNION OF INDIA AND ANR.

.....Respondent

Through: Ms. Barkha Babbar, adv. with Mr. Sujeet Kumar Sachan, Senior Accountant

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The writ petition preferred by the petitioner to seek pro-rata pension under Rule 49(2) of the CCS (Pension) Rules, 1972 was initially dismissed by this Court on 05.12.2018 on the premise that the petitioner did not have 10 years of qualifying service. In this regard, the facts taken into account were that the service record of the petitioner was not available; the respondents had computed the period of petitioner's qualifying service as 9 years 8 months and 7 days and; even the petitioner had himself enclosed as Annexure P-12 – a set of documents including the calculation of the

qualifying service by the Pay & Accounts Office (CISF), MHA, New Delhi, which too showed the qualifying service of the petitioner as 9 years 8 months and 7 days. Subsequently, the petitioner moved the review petition No. 45/2019. That Review Petition was allowed on 24.05.2019 and the matter was directed to be re-heard.

2. We have, accordingly, heard learned counsel for the parties. It appears that the petitioner was subjected to penalty of compulsory retirement and, accordingly, he was compulsory retired w.e.f. 26.08.1997.

3. At that stage, he was not granted any retiral benefits and he did not raise any issue in that regard. It appears that after eighteen years, vide application dated 10.10.2015, the petitioner sought to take up the issue of his pension. The respondents then issued a communication dated 22.03.2016 informing the petitioner about his compulsory retirement w.e.f. 26.08.1997. It was also informed to the petitioner that his total gross qualifying service was 11 years 01 month and 13 days, out of which, a period of 01 year 04 months was non qualifying period. Then the net qualifying service was stated to be 09 years 09 months and 13 days. The letter stated that pension is not due to him, since he did not have 20 years of qualifying service. The respondents revised this communication vide letter dated 20-21/04/2016, wherein the total gross qualifying service was stated to be 11 years 01 month and 13 days, and the non qualifying period was stated to be 01 year 05 months. Then the net qualifying service of the petitioner was stated to be 09 years 08 months and 13 days. The respondents also corrected the minimum service required for grant of pension from 20 years to 10 years.

4. The submission of Mr. Lokur is that the downward revision of the qualifying service of the petitioner was deliberately done with a view to deny him pension to which he would have been entitled, if his net qualifying service were to be considered as 09 years 09 months and 13 days. He submits that by virtue of Section 49(3) of the CCS (Pension) Rules, in calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service. Thus, if the net qualifying service is treated as 9 years 9 months and 13 days, the same would be liable to be rounded off to 10 years, which would entitle the petitioner to pro-rata pension under Rule 49 of the CCS (Pension) Rules, 1972.

5. The respondents have consistently stated before this Court that the net qualifying service of the petitioner is 09 years 08 months and 07 days. The respondents have also stated in their communication dated 06.05.2016 that all official records before 15 years of service of disbanded units have been destroyed. The only record available with the respondents is of the pay and accounts office, New Delhi, on the basis of which it cannot be said that the petitioner had the requisite qualifying service.

6. The respondents were directed to keep the said record available, which has been produced before this Court. It has been perused by us as well as learned counsel for the petitioner. This record shows that the qualifying service of the petitioner is only 09 years 08 months and 07 days.

7. Considering the fact that it is the petitioner who is responsible for the immense delay in staking his claim for pension, the petitioner cannot take

advantage of the fact that his service record has been destroyed with the passage of time. He must, therefore, make good his claim on the basis of the record available with the respondents. Pertinently, he has not produced any credible and relevant material to substantiate his claim of having at least 10 years of qualifying service.

8. After perusing the record produced by the respondents, Mr. Lokur has submitted that in the tabulation contained at internal page No.10 of the record, which contains calculation of pension, gratuity, family pension, commutation value of pension under CCS (Pension) Rules, 1972 in relation to the petitioner, under the heading “Suspension not Pensionable”, the period is shown as 30.03.1996 to 20.02.1997. He submits that the said period is computed as 11 months and 04 days, whereas the same translates to 10 months and 28 days.

9. Even if we accept this submission, it would only lead to addition of another 06 days of qualifying service and would not materially alter the position for the petitioner. The record shows that there are other contemporaneous documents placed in the file, which too reflect upon the net qualifying service of the petitioner as 09 months 08 months and 07 days only. Reliance placed on the initial letter dated 22.03.2016 issued by the respondents is of no avail since, firstly, the same was withdrawn and, secondly, there is no material to back it up. The record, on the contrary, supports the respondents stand that the net qualifying service was only 09 years 8 months and 07 days.

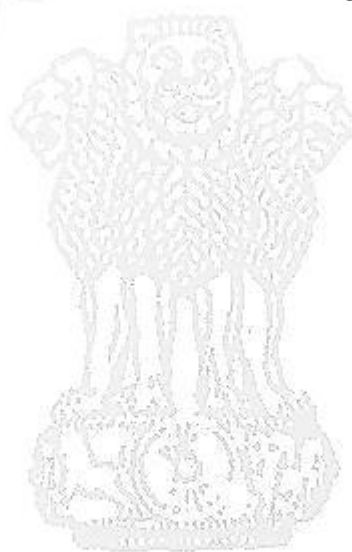
10. The aforesaid being the position, we are of the view that there is no merit in this petition. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 25, 2019

N.Khanna



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