

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty

&

The Hon'ble Justice Partha Sarathi Chatterjee

WPCT 34 of 2024

Union of India & Ors.

-Vs.-

Anupam Biswas

For the Petitioners/UoI : *Mr. D.N. Ray,*
Mr. Rajesh Kr. Shah,
Mr. Sourav Haldar.

For the Respondent : *Dr. Madhu Sudan Saha Roy.*

Heard on : *26.07.2024*

Judgment on : *16.08.2024*

Partha Sarathi Chatterjee, J.:-

Preface:

1. A legal wrangle over the issue of the disbursement of pension upon condonation of deficiency of qualifying service has reached the writ jurisdiction of this Court through this writ petition, which has been preferred

by the Union of India and its functionaries (hereinafter referred to as the petitioners). This writ petition seeks to question the tenability of the order dated June 21, 2022 passed by the learned Tribunal in an original application (in short, OA), being OA 1230 of 2022. In that order, the learned Tribunal nixed the order dated 01.12.2021 issued by the Director (Estt.), Government of India, Ministry of Communication, Department of Telecommunication, which denied the claim for pension advanced by the original applicant/respondent (hereinafter referred to as the respondent). The learned Tribunal directed the petitioners to release pension and other admissible retirement benefits to the respondent within a specific time frame.

Facts:

2. Before addressing the issue, it is necessary to outline the relevant facts, as reflected in the writ petition and the order currently under scrutiny in this writ petition, for clarity and convenience. The respondent joined the Calcutta Telecommunication in a temporary position as an Engineering Supervisor in 1967. As he met the requisite conditions stipulated in CCS (CCA) Rules and various other relevant instructions, he was granted quasi-permanent status in the grade of Jr. Engineer effective from 18.12.1971, by an order dated 20.08.1975.
3. By an office order dated 20.08.1975, the respondent was relieved from the Calcutta Telecommunication Department (in short, CTD) to join as Assistant Engineer in the Overseas Communication Service (in short, OCS), in accordance with the terms and conditions stipulated in O.M. dated 6.8.1975. The respondent joined OCS on 25.08.1975 and was permitted to retain his lien

for two years. Subsequently, the petitioner joined ITI Limited as an Apprentice Assistant Executive Engineer on 28.02.1977. However, the date of his release was recorded as 14.02.1977, without any indication as to how the intervening period from 14th February, 1977 to 28.02.1977 was accounted for. He resigned from P & T Department on 6.1.1978. Later, he was appointed as Assistant Executive Engineer in ITI Limited on regular basis *w.e.f.* 30.03.1978.

4. The respondent resigned from the OCS on August 14, 1979, and from ITI Limited on October 31, 1984. The respondent's grievance is that his lien was not retained, nor was his leave salary and pension contributions paid to the CTD by the OCS. Additionally, the CTD did not extend his lien. The respondent submitted multiple representations. In response to the respondent's representation dated December 28, 1999, the Department of Telecommunications (DoT), by its order dated August 3, 2000, noted that the respondent's lien was actually retained by the OCS and not by the CTD. The DoT stated that since the respondent resigned from Government service voluntarily for better prospects elsewhere, it was not feasible to reinstate him in Government service or grant any service-related benefits.
5. Ultimately, the respondent's claim for pension and other service-related benefits were denied on the ground that as his lien was not extended by the CTD, which granted him Quasi-permanent status, his lien was treated to have been terminated *w.e.f.* 19.8.1977. Additionally, the OCS had not transferred his leave salary and pension contribution to CTD. Therefore, the respondent's qualifying service for pension falls short of 10(ten) years by three months.

Consequently, he was not entitled to pension, even on pro-rata basis, according to the extant rules.

6. After being denied his pension and other service-related benefits by the respondents, the petitioner approached the learned Tribunal with an original application, OA 1351 of 2013, which was disposed of by an order dated 20.11.2015, directing the petitioner no. 6 to decide on the respondent's claim for pension by passing a speaking order in the light of the observations made in that order. Pursuant thereto, a speaking order dated 22.02.2016 was passed rejecting the respondent's claim, which prompted the respondent to knock on the door of the learned Tribunal again with another original application, OA 1470 of 2016. After a contested hearing, the learned Tribunal, by an order dated 27.06.2020, disposed of OA 1470 of 2016, directing the petitioners to issue appropriate orders for grant of pension and other admissible retirement benefits to the respondent, after completion of all procedural formalities, with a liberty to adjust the financial arrears, if any, within a specific time frame.
7. However, the respondent assailed the order dated 27.06.2020 in WPCT 37 of 2021. A coordinate Bench of this Court disposed of the writ petition, WPCT 37 of 2021 by an order dated July 6, 2021. In that order, it was observed that a deficit of three months to deny the pensionary benefits would be harsh. Accordingly, the competent authority was directed to consider the respondent's case for grant of pension and other retirement benefits in terms of the paragraph 6 of the order impugned in that writ petition and the time to comply with the direction contained in that paragraph 6 was extended for a further period of two months.

8. However, in compliance with the orders dated July 6, 2021 and June 26, 2020 passed in WPCT 37 of 2021 and OA 1470 of 2016 respectively, the respondent's case for grant of pension was considered but such consideration again ended in outright rejection of the respondent's claim for pension and other retirement benefits, as would be reflected in an order dated 1.12.2021 issued by the Director (Estt.), Government of India, Ministry of Communication, Department of Telecommunication.

9. The respondent assailed the order dated 1.12.2021 in OA 1230 of 2022, which was disposed of by an order dated 21.06.2022. In this order, the learned Tribunal directed the competent authority to pass appropriate orders for grant of pension and other admissible retirement benefits to the respondent, after complying with all procedural formalities for such grant in accordance with law, with liberty to adjust adjust/claim any financial arrears within three months from the date of receipt of a certified copy of that order. It was clarified that after passing of such order, the amount so arrived at shall be released along with admissible arrears to the respondent within 2 months thereafter. Aggrieved thereby, the petitioners have preferred this present writ petition to seek judicial review of the order dated 21.06.2022 passed in OA 1230 of 2022.

Arguments:

10. Mr. D.N. Ray, learned advocate, representing the petitioner, argued that the respondent resigned from Government service of his own volition in search of better prospects. Since his lien had not been extended, his service was treated to have been terminated on and from 19.8.1977. He lamented that

these issues were raised before the learned Tribunal but it glossed over these issues and no findings were returned on the same. He asserted that the learned Tribunal erred in directing the petitioners to pay pension and other service related benefits to the respondent.

11. In response, Dr. Madhu Sudan Saha Roy, learned advocate representing the respondent, argued that the respondent was appointed to a temporary post at CTD in 1967 and was granted quasi-permanent status on December 18, 1971. Subsequently, the respondent was appointed as an Assistant Engineer in OCS on August 25, 1975, with the condition that his lien would be retained. After rendering service in ITI Limited for almost nine years, he resigned. According to him, due to a mistake committed either by OCS or CTD, the respondent should not be made to suffer. Citing two unreported decisions rendered by a coordinate Bench of this Court in WPCT 57 of 2023 (Jadab Chandra Mahato v. Union of India & Ors.) and MAT 540 of 2022 (Saktipada Hazra v. State of West Bengal & Ors.), he argued that in similar situations where there was a shortfall of qualifying service by three months, a coordinate Bench directed the authority to disburse pension and other retirement benefits to the employees.

Analysis:

12. Therefore, the record reveals that the petitioner served in the CTD initially as temporary staff and then as quasi-permanent staff from 1967 until at least August 20, 1975. As noted previously, he was granted quasi-permanent status on December 18, 1971. He was relieved from the CTD to join the OCS as an Assistant Engineer on August 20, 1975, with the condition that

his lien would be retained for two years, i.e. until August 19, 1977. He joined ITI Limited on February 28, 1977, and resigned from ITI Limited on October 31, 1984.

13. In the order impugned in the writ petition, the learned Tribunal categorically observed that the order dated 10.08.1975 specifically mentioned that the respondent's lien might be retained for 2 years as per Minister of Home Affairs *Memo.* dated 22.1.1966. A communication dated 9.8.1975 addressed to the Chief Personnel Manager, ITI Limited, clarified that the respondent's lien would be retained in OCS and that if he wished to revert to OCS within two years, he would be taken back if a post was available otherwise, he would have to resign from the OCS.

14. In that order, the learned Tribunal quoted the relevant portion of the a circular of Department of Telecommunication dated 24.03.2008 to demonstrate the policy adopted by the department, requires that the combined period of deputation to CAR/PSU and services in the Government Department should exceed 10(ten) years for retirement benefits irrespective of whether the deputation of the employee was carried out voluntarily or in the public interest. The learned Tribunal further disapproved the unilateral withdrawal of the order dated 6.5.2010 by the authority concerned by a subsequent order dated 10.05.2010, without providing a hearing to the respondent. After completion of two years, the respondent tendered his resignation to the Director General, OCS, with an undertaking to deposit leave salary and pension contribution to avail of pension and other terminal benefits.

15. The learned Tribunal observed that the lien was never revoked and, therefore, in calculating the qualifying service for pension, the deputation period cannot be ignored. Rule 13 of the CCS (CCA) Pension Rules, 1972 (in short, the Pension Rules) mandates that qualifying service for pension must be reckoned from the date an employee assumed charge of the post to which he was first appointed, whether in a substantive or temporary capacity. As such, there was no requirement to take recourse to Rule 88 of the Pension Rules. Quoting Rule 26(2) of the Pension Rules, the learned Tribunal noted that a resignation shall not entail forfeiture of past service, if it is tendered with proper permission. As noticed earlier, as the lien had not been extended, the petitioner resigned in compliance with the instruction contained in the communication dated 9.8.1975, as referred above.

16. Record further reveals that in paragraph 6 of its order dated January 27, 2020, passed in OA 1470 of 2016, the learned Tribunal directed the petitioners to reconsider the respondent's case for the grant of pension and other retirement benefits and to issue an appropriate order, including the relaxation of any conditions if required, taking recourse to Rule 88 of the Pension Rules. A coordinate Bench, while disposing of the writ petition WPCT 37 of 2021, observed that the deficit of three months to deny pensionary benefits would be harsh and accordingly directed the respondents to consider the respondent's case for the grant of pension in accordance with the directions given in paragraph 6 of the order dated January 27, 2020, in OA 1470 of 2016. The order passed in WPCT 37 of 2021 has not been challenged in any forum. Instead, under the guise of its compliance, a new order has been passed rejecting the respondent's claim citing the same reason that there is

short fall of 120 days and shortfall up to 90 days can be condoned and as such, since there is a shortfall of 30 days, the respondent is not entitled to pension and his case is not fit for invoking the Rule 88 of the Pension Rules to relax any clause of the Pension Rules.

17. To be concise, it can be argued that the learned Tribunal rightly observed that neither OCS nor CTD made a final decision regarding the respondent's lien, and the respondent should not be penalized for faults on the part of either CTD or OCS. The learned Tribunal observed that the lien had never been revoked. In a communication dated 9.8.1976, the Administrative Officer noted that the respondent was required to resign after two years. The record shows that the respondent submitted his resignation on 14.08.1979, along with an undertaking to deposit leave salary and pension contributions to qualify for pension. According to a Department of Telecommunications circular dated 24.03.2008, the combination of the deputation period to CAR/PSU and the period spent in Government Service should be considered when calculating qualifying service for pension, regardless of whether deputation was undertaken voluntarily or in the public interest. Additionally, Rule 26(2) states that a resignation given with prior permission does not result in forfeiture of past service. Therefore, the learned Tribunal correctly concluded that the respondent is entitled to pension and other terminal benefits. We concur with the observations and order of the learned Tribunal.

18. In order to tide over the vagaries and vicissitudes associated with his old age, the respondent has made several attempts. Since 2010, he communicated repeatedly with the petitioners and since 2016, he has been entangled in the legal battles. Therefore, the respondent has remained trapped

in a purgatorial legal rigmarole, moving back and forth between the concerned authorities, the Tribunal and this Hon'ble Court. He has been constrained to approach the learned Tribunal twice with two separate original applications and also to knock on the door of this Court also. On each occasions, the learned Tribunal and this Court directed the respondent's claim in the light of their observations. However, each time, the concerned respondents have rejected his claim, citing various reasons.

19. Such conduct by the petitioners reminds one of an observation made by the Hon'ble Supreme Court in the judgment reported at AIR 1988 SC 686 (K.I. Shephard vs. Union of India), where it was noted that once a decision has been taken, there is a tendency to uphold it. Our common experience also indicates that once an authority takes a stand, it often persists with that stance, sometimes bypass the directions of the Tribunal or the Court by citing various reasons.

20. In a decision, reported at AIR 2005 SC 115 (E.T. Sunup v. C A N S S Employees' Association), the Hon'ble Supreme Court lamented that '*It has become a tendency with the Government officer to somehow or the other circumvent the orders of court and try to take recourse to one justification or other this shows complete lack of grace in accepting the orders of the court. This tendency of undermining the court's order cannot be countenanced. This Court time and again has emphasized that in democracy the role of the court cannot be subservient to the administrative fiat. The executive and legislature has to work within Constitutional frame work and the judiciary has been given a role of watch dog to keep the legislature and executive within check*'.

- 21.** A court or judicial institution refers an issue to the competent authority not because it is unable to determine the issue, but to avoid unwarranted encroachment into the domain of administration. It should be noted that everyone holding an office, especially a model employer, must conduct themselves with high probity and candor and cannot exercise their power arbitrarily or according to their own whims and choice. It is bound to act in accordance with the settled principle of law, reasonably and in conformity with constitutional morality.
- 22.** After careful consideration of the arguments advanced by both parties, a thorough review of the pleadings and documents relied upon, and a detailed scrutiny of the order challenged in this writ petition, we have no qualms in endorsing the view taken by the learned Tribunal. We do not find any infirmity, substantial miscarriage of justice, or patent error, let alone any jurisdictional error, in the order under challenge in the present writ petition that warrants interference with the same.
- 23.** Consequently, the writ petition being WPCT 34 of 2024 is, thus, dismissed, however, without any order as to the costs.
- 24.** Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.
- 25.** Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)