

13.01.2025
D.L. 6
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 27958 of 2023

Ujjal Chattopadhyay
Vs.
The Airports Authority of India & Ors.

Mr. B. N. Ray,
Ms. Shetparna Ray
.....for the petitioner.

Mr. Anup Kanti Poddar,
Ms. Khusboo Ruia,
Ms. Anjali Shaw
.....for the respondent nos.1 to 5.

Mr. Dhiraj Trivedi, DSGI,
Mr. Anish Kumar Mukherjee
.....for Union of India.

Mr. Satyendra Agarwal,
Mr. Bijoy Bag
.....for E.P.FO.

The petitioner has challenged the letter dated 23rd February, 2017 issued by the Deputy General Manager, Human Resources (HR) of Airports Authority of India (in short, AAI) by which the petitioner's application for being included under the Central Pension Scheme as framed under Central Civil Services (Pension) Rules, 1972 (in short "CCS Rules") and introduced in terms of the memorandum dated 11th January, 2022 was rejected. The petitioner has also prayed for being included under the Central Pension Scheme after the letter dated 23rd February, 2017 being quashed and/or set aside.

On a perusal of the records, it appears that the petitioner was selected by the Civil Aviation Department, Government of India pursuant to a selection process for being appointed to the post of Fire Operator in the said department. The petitioner was issued an appointment letter on 2nd March, 1983, which is annexed at page 32, being Annexure – ‘P-2’ of the writ petition. Despite issuance of such appointment letter the petitioner was not given the post, as a consequence whereof the petitioner along with few others approached the Central Administrative Tribunal, Kolkata Bench by filing an original application, being O.A. 39 of 1986. The said application was disposed of by an order dated 27th March, 1986, which is at page 34, being Annexure - ‘P-4’ of the writ petition, directing that the petitioner be given appointment. The Tribunal had also held that the letter dated 2nd March, 1983 was in all aspects a letter of appointment which had been acted and the posting order was also issued. Pursuant to the said order, the Ministry of Civil Aviation, however, did not issue any further letter either giving appointment or posting to the petitioner anywhere. On 26th May, 1987, the National Airports Authority (in short, NAA) issued an appointment letter to the petitioner.

On a mere perusal of the said appointment which is at page 39, being Annexure- 'P-6' of the writ petition, it appears that NAA had conducted a test and was pleased to offer the petitioner the appointment on a temporary post of Fire Operator. On a comparison of the appointment letter dated 2nd March, 1983 and that of 26th May, 1987, it is apparent that the same are different, particularly in view of the fact that the appointment under Civil Aviation Department was against the post of Fire Operator while by NAA was against a temporary post of Fire Operator. Moreover, separate selection tests appear to have been conducted for selecting the petitioner while issuing the two different appointment letters. The petitioner, therefor, accepted the appointment letter of NAA and joined therein.

It is, therefor, apparent that the petitioner never joined the Ministry of Civil Aviation, but he started his journey with NAA. NAA had subsequently merged with Airports Authority of India (AAI). The petitioner retired from AAI on 30th November, 2018. At the time of retirement the petitioner claims to be holding the post of Senior Superintendent (Fire) and was posted at Netaji Subash Chandra Bose International Airport (in short, NSCBIA) under AAI. Prior to retirement, the petitioner by a letter dated 10th January, 2017 made a

representation for being given the benefit of Central Pension facilities under CCS (Pension) Rules, 1972. This prayer was ultimately rejected by the letter dated 23rd February, 2017, which is the subject matter of challenge.

The writ petition has been filed on 12th December, 2023, after expiry of more than 5 years from the date of rejection of the petitioner's prayer, vide letter dated 23rd February, 2017.

Looking from such perspective, the petitioner has come up with a belated service related claim which on a strict scrutiny is not required to be entertained. Since AAI has not raised such point, we may ignore such objection, though limitation is an issue which even if not raised, is required to be decided. However, without going into such aspect even if the petitioner's claim is considered on merits, the petitioner has not been able to make out a case for interfering with the rejection letter dated 23rd February, 2017.

As stated hereinabove, the petitioner was never an employee under the Ministry of Civil Aviation. He was all along an employee under NAA and thereafter under AAI. The memo dated 11th January, 2022 to which the petitioner refers though does not form part of the writ petition or the report in the form of an

affidavit filed by the respondents as also in the petitioner's exception yet on the same being taken into account, the same is admittedly issued subsequent to the petitioner's representation and also after the rejection of the petitioner's prayer. The memo to which the petitioner refers to is on a mere reading applies to the employees transferred en-masse from the erstwhile Civil Aviation Department (in short, CAD/Directorate General of Civil Aviation (DGCA) to AAI with less than 10 years of service at the time of absorption. The petitioner was never transferred from the Ministry of Civil Aviation to NAA and thereafter to AAI, and as such, this memo also does not apply in case of the petitioner. The issue of granting pension to the transferred employees of the Central Government to a public sector undertaking has been considered by the Hon'ble Supreme Court in the judgment reported in **2021 (16) SCC 712 [Union of India & Ors. vs. K. Premakumari & Ors.]**. This judgment also does not lend any assistance to the petitioner in the facts of the case. Moreover, the petitioner is also not holding a civil post under the government as held in **AIR 1970 SC 1150 [Dr. S.L Agarwal vs. General Manager, Hindustan Steel Ltd.]**. There is also no dispute that the petitioner on having retired has been paid his retiral benefits as

applicable by AAI which has been duly accepted by the petitioner.

In the appointment letter dated 26th May, 1987 in clause 19 it has been specified that the petitioner will have to abide by the provisions of Central Civil Services (Conduct) Rules, 1964, as amended from time to time. This also does not assist the petitioner as mere application of the said Rule does not make the petitioner a Central Government employee or an employee of CAD.

It is now well-settled that an employee of statutory corporation and/or undertaking of a Government is not a government employee as has been held in **2003 (6) SCC 490 [Officers & Supervisors of I.D.P.L. vs. Chairman & M.D., I.D.P.L. & Ors.]**.

In clause 15 of the appointment letter dated 26th May, 1987 it has been stipulated that the petitioner was required to contribute to the General Provident Fund in accordance with the orders issued from time to time.

The petitioner has not raised any dispute that he has not been treated as an employee governed by the General Pension Scheme applicable to the employees of NAA or to those of AAI wherefrom the petitioner ultimately retired.

This Court is not required to go into such dispute while adjudicating this writ petition wherein the petitioner only claims to be treated as a pensioner under the CCS (Pension) Rules, 1972.

In view of the findings as aforesaid and the observations made in the impugned letter, I do not find any merit in the claim of the petitioner even if the delay in filing the writ petition is ignored by considering that the same relates to petitioner's claim for pensionary benefit.

The writ petition is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)