

Praduman Kumar Jain vs Union Of India on 11 July, 1994

Equivalent citations: 1994 SCC, SUPL. (2) 548 JT 1994 (4) 507

Author: Kuldip Singh

Bench: Kuldip Singh, Yogeshwar Dayal

PETITIONER:

PRADUMAN KUMAR JAIN

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 11/07/1994

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

YOGESHWAR DAYAL (J)

CITATION:

1994 SCC Supl. (2) 548 JT 1994 (4) 507

1994 SCALE (3) 160

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- Special leave granted.

2. The appellant joined Central Government service on 2-3- 1974. He was selected for appointment as Senior Engineer in the National Thermal Power Corporation (NTPC), a Central Government Undertaking. He joined the NTPC on 31-10-1986. No specific order confirming the appellant in the service of the Central Government was issued. The question before the Central Administrative Tribunal (the Tribunal), New Delhi was whether the appellant was entitled to pro rata pension for the period of his service under the Central Government. The Tribunal answered the question in the negative and rejected the claim of the appellant on the short ground that the appellant was not a

substantive employee of the Central Government. This appeal by way of special leave is against the judgment of the Tribunal dated 24-10-1991.

3. The appellant joined the Central Government service on 2-3-1974 as Technical Assistant in the office of the Director General of Supplies & Disposals and worked there till 12-10-1977. On 13-10-1977 he joined the Indian Meteorological Department (IMD) as Assistant Meteorologist after being selected through the Union Public Service Commission. He was placed on probation for a period of two years. He was permitted to cross the first efficiency bar on 1-10-1983. While working with the IMD he was selected for appointment as Senior Engineer in the NTPC. He was required to resign from the Central Government service for the purpose of joining the NTPC. The appellant delayed his joining the NTPC because his case for confirmation as Assistant Meteorologist was under consideration of the Central Government. The NTPC finally directed the appellant to join on or before 31-10-1986. In the meantime, the appellant was promoted as Meteorologist Grade-I in the IMD with effect from 22-9-1986 and posted at Pune. However, in order to pursue his case for confirmation, he decided to forego the promotion. Despite repeated representations the IMD did not confirm the appellant and, as such, he submitted his resignation on 21-10-1986 to the IMD. He was relieved on 30-10-1986 by the IMD and he joined the NTPC on 31-10-1986. On 11-2-1987 the appellant again represented to the Central Government requesting for the grant of pro rata pension as he had served the Government for twelve years and eight months. The Director General, IMD by his letter dated 11-11-1987 informed the appellant that since the seniority list of the cadre of Assistant Meteorologist has been quashed by the Central Administrative Tribunal, Madras Bench, his case "for confirmation will be considered according to rules on the basis of revised seniority list when finalised". Since no decision was taken by the IMD for considerable time, the appellant approached the Tribunal seeking direction that he should be deemed to be a substantive employee of the Central Government within the meaning of Rule 13 of the CCS (Pension) Rules 1972 (the Rules) and, as such, entitled to pension and other retrial benefits under the rules. As mentioned above, the Tribunal rejected the prayer.

4. The question whether the appellant is entitled to pro rata pension in respect of the service for the period of twelve years and eight months rendered by him under the Central Government depends on the point whether he held the appointment in the service of the IMD in a substantive capacity. It is not disputed that the appellant was appointed as Assistant Meteorologist on 13-10-1977 by way of direct recruitment through the Union Public Service Commission. Direct recruitment, invariably, is made against permanent vacancies. It is not the case of the respondents that the appellant was appointed against a temporary post. The appellant was, therefore, appointed as Assistant Meteorologist against a permanent vacancy. He was on probation for a period of two years. His crossing the efficiency bar in October 1983 and further promotion to the higher post in September 1986 show that he successfully completed his probation period. In any case it is obvious that the work and conduct of the appellant has, throughout been satisfactory.

5. The finding of the Tribunal, that the appellant was working in an officiating capacity, is solely based on the wording of the order dated 29-3-1984 allowing the appellant to cross the efficiency bar wherein it was mentioned that the increment was being given to him in the officiating post of Assistant Meteorologist. We fail to understand how a direct recruit in the post of Assistant

Meteorologist, who joined service in 1977 and completed his probation in 1979, could be working against an officiating post. As mentioned above, direct recruitment is always made against permanent vacancies. A person appointed against a permanent vacancy, completing his probation period successfully, crossing the efficiency bar and even promoted to the higher rank, cannot be considered to be working in an officiating capacity.

6. It would be useful to refer to para 4 of the Office Memorandum dated 31-1-1986 which is in the following terms :

"Pensionary benefits : (i) Resignation from government service with a view to secure employment in a Central public enterprise with proper permission will not entail forfeiture of the service for the purpose of retirement/terminal benefits. In such cases, the government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation."

7. It is not disputed that the appellant resigned from government service with a view to secure employment in the Central public enterprise with proper permission of the Central Government. The appellant is, therefore, entitled to the benefit of the above-quoted Office Memorandum. We may also refer to para 4.1 of the Office Memorandum dated 28-3-1988 which is reproduced hereunder:

"4.1 Confirmation

(a) General

(i) Confirmation will be made only once in the service of an official which will be in the entry grade.

(iii) Confirmation is delinked from the availability of permanent vacancy in the grade. In other words, an officer who has successfully completed the probation may be considered for confirmation."

8. The memorandum dated 28-3-1988 came into force with effect from 1-4-1988.

9. The Tribunal came to the conclusion that since the appellant had resigned from the Central Government service before coming into force of the Office Memorandum dated 28-3-1988 the same was not applicable in his case.

10. It is not disputed that the appellant had more than ten years of service under the Central Government. His service would count as qualifying service for pension if the provisions of Rules 13 and 49 of the Rules are satisfied. The relevant provision of Rules 13 and 49 are as follows :

"13. Commencement of qualifying service. Subject to the provisions of these rules, qualifying service of a government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post.

49. (2)(b) The amount of pension arrived at on the basis of the above slabs will be related to the maximum qualifying service of 33 years. For government servants who, at the time of retirement, have rendered qualifying service of ten years or more but less than 33 years, the amount of their pension will be such proportion of the maximum admissible pension as the qualifying service rendered by them bears to the maximum qualifying service of 33 years. A few illustrations are. given in the Annexure to this Office Memorandum."

11. This Court in *Baleshwar Dass v. State of U.P.*¹, interpreted the term "holding of a post in a substantive capacity" in the following terms : (SCR head note p. 451) "A person is said to hold a post in a substantive capacity when he holds it for an indefinite period, especially of long duration in contradistinction to a person who holds it for a definite or a temporary period or holds it on probation subject to confirmation. If the appointment is to a post and the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the tests prescribed have been taken and passed, if probation has been prescribed and has been approved, one may well say that the post was held by the incumbent in a substantive capacity." (emphasis supplied)

12. Although the combined reading of the two Office Memorandums reproduced above support the appellant's contention that he stood confirmed in the post of Assistant Meteorologist before he resigned the Central Government service but it is not necessary for us to go into the effect of the two 1 (1980) 4 SCC 226: 1980 SCC (L&S) 531:(1981)1 SCR 449 Memorandums. Examining the facts and circumstances of this case in the light of the law laid down by this Court in *Baleshwar Dass* case¹, the only conclusion which can be drawn is that the appellant was working as Assistant Meteorologist in a substantive capacity.

13. We, therefore, hold that the appellant had been appointed in a substantive capacity against a permanent post of Assistant Meteorologist and is therefore entitled to pro rata pension and other terminal benefits in respect of the service rendered by him under the Central Government.

14. We direct the respondents to compute and pay the pension and other terminal benefits due to the appellant under the rules and all other relevant orders/regulations, within three months of the receipt of this judgment. The appellant shall be entitled to 12% interest on the arrears of payment to which he becomes entitled as a result of this judgment.

15. We allow the appeal in the above terms and set aside the judgment of the Tribunal. The appellant shall be entitled to his costs which we quantify as Rs 10,000.