

V. S. Murthy

Vs

Union of India and others

Civil Appeal No. 127 of 1991

(A. M. Ahmadi, Dr. A. S. Anand JJ)

07.05.1992

JUDGEMENT

Dr. A. S. ANAND, J.

1. The short and only question requiring consideration of this Court in this appeal, by special leave, from the order of the Central Administrative Tribunal, Principal Bench, New Delhi, made in O.A. No. 542/87 on 18th of April 1990, is whether for calculating the pension, the amount paid by way of deputation (duty) allowance by Hindustan Organic Chemicals Limited, Rasayani to the appellant, while on deputation from the Railways, is to be included? The necessary and relevant facts are as follows:

2. The appellant was appointed as a Clerk, Grade-II, in the Office of the Financial Adviser and Chief Accounts Officer, Central Railways, Bombay V.T. on 25-1-1950. In 1953, he was promoted as Stock Verifier in the pay-scale of Rs. 80-220. While the appellant was so working, in 1979, he proceeded on deputation to join as a Vigilance Inspector in the Hindustan Organic Chemicals Limited [thereinafter referred to as HOCL] initially for a period of one year, which period was extended from time to time till he was permanently absorbed in HOCL on 8-12-1982. At the time of proceeding on deputation, the pay-scale of the appellant in the Central Railways was Rs. 490-30-640-35-81540-1055. On deputation, the pay of the appellant was regulated in terms of the FA and CAO's Office Memorandum, dated 12-12-1979, and the appellant received his pay, as admissible from time to time, plus the deputation (duty) allowance. The appellant was permanently absorbed in the HOCL with effect from 8-12-1982 following his resignation from the Central Railway. The appellant claimed his pensionary benefits from the Central Railways.

3. In accordance with the relevant orders of the Government of India, a pensionary employee on permanent absorption in a public sector undertaking, is entitled to the grant of pension on the basis of qualifying years of service etc. The Government of India, however, makes a departure in such cases, from the normal rule of commutation of pension to the extent of 1/3rd of the pension to full (100%) commutation of pension. In the case of appellant, on his request, 100% commutation of pension was allowed, by the Government of India. The calculation of pension was, however, made without taking into account the amount of deputation (duty) allowance of Rs. 150.per month, which the appellant -was drawing, while on deputation from the Central Railways, to the HOCL. It is pertinent to notice here that the appellant had opted for contributory provident fund and had received the benefit in respect thereof from the HOCL for the period for which he was on deputation. Having failed to persuade the authorities, through various representations, to include the deputation (duty) allowance for the purpose of calculation of his pension the appellant approached the Central Administrative Tribunal, Principal Bench, Delhi.

4. The claim of the appellant was contested by the respondents before the Tribunal on various grounds. It was urged that the service rendered by the appellant on deputation to the HOCL was foreign service and, therefore, the deputation (duty) allowance received by him could not be included in the expression "emoluments" for the purpose of calculation of pension. Reliance was placed by the respondents on Para 506(i) and 501(4)(1) of the Manual of Railway Pension Rules, 1950 (hereinafter referred to as MRP Rules), and Rule 2544 A and B (CSR 486 A and 486 B) of Indian Railway Establishment Code, Vol. II (hereinafter referred to as IRE Code). The Tribunal found that the provisions of Manual of Railway Pension Rules were meant only for the guidance of the railway staff and those provisions could not override the statutory contained in the IRE Code. The Tribunal then referred to various provisions of the IRE Code and held that deputation (duty) allowance, in case of deputation to bodies owned wholly or substantially controlled by the Government, would reckon for pension in terms of the provisions made in R. 2544-A and 2544-B [CSR 486-A and 486-B] of the IRE Code, subject, however, to the fulfilment of the conditions laid down therein, notwithstanding the provisions of MRP Rules. The Tribunal, however, found that the benefit of counting the deputation (duty) allowance received by the appellant from HOCL for calculation of his pension was not available to the appellant as he did not fulfil the condition of length of service during which he should have drawn the specialpay as envisaged by Rules 2544-A [CSR 486-A] and 2544-B [CSR 486-B] of IRE Code.

5. The appellant, appearing in person, has taken us through the provisions of the MRP Rules as well as the IRE Code. He canvassed that the Tribunal fell in error in holding that the appellant had not satisfied the conditions necessary for having the deputation allowance included for calculation of his pension and asserted that the deputation (duty) allowance was required to be included for calculation of pension, since it was in the nature of "special pay" an "special pay under the IRE Code read with F. R. had to be taken into account for calculation of pension.

Dr. Anand Prakash, learned senior Advocate, appearing for the respondent, in his reply submitted that since the Tribunal had failed to take note of certain relevant provisions of IRE Code, its reasoning was fallacious, though the impugned order was correct and required no interference. He argued that the appellant was receiving hi. pay while on deputation to HOCL from a source other than from the general revenue of the State, which criterion under Rule No. 2003 (F. R. 9) of the IRE Code rendered the service of the appellant in HOCL as foreign service and the deputation (duty) allowance received by an employee of the railways while on foreign service could not be included for the purposes of calculation of the emoluments in view of para 2544 [CSR 486-C] of the IRE Code. Learned counsel for the respondent, therefore, argued that the order of the Tribunal did not call for any interference.

We have given our thoughtful considerations to the submissions made at the bar. We agree with the Tribunal that the provisions of Manual of Railway Pension Rules are meant for the guidance of the staff and by themselves do not have any statutory force. In our opinion, however, the MRP Rules supplement the statutory rules and for what follows, can be harmoniously read with the statutory provisions contained in the IRE Code.

Paras 501 (4)(1) and 506 of MRP Rules read as follows:

501(4)(1):

"(1) If immediately before quitting the service a Railway servant has been absent from duty on leave, with allowances (including leave preparatory to retirement) or on

foreign service or having been suspended but reinstated without forfeiture of qualifying service, his emolument should be taken at what they would have been had he not been on such leave or foreign service or suspension."

506:

"The following do not count as 'emoluments' for pensionary benefits and will not be taken into account for reckoning as 'emoluments'.

(i) Local Allowances such as bad climate allowance, when sanctioned as compensatory allowance and deputation (Local) allowance or deputation (duty) allowance drawn on deputation to non-Government departments or bodies;

(ii) Messing allowance;

(iii) House Rent allowance or estimated value of rent free quarters;

(iv) Travelling Allowance;

(v) Conveyance allowance;

(vi) City Compensatory allowance;

(vii) Uniform allowance;

(viii) Washing allowance;

(ix) Any other part of Railway servant's emoluments which is specially intended to provide for expenses incidental to his duty;

(x) Bonus;

(xi) Honorarium;

(xii) Fees and

(xiii) Overtime.

[Emphasis supplied]

The guidelines contained in Paras 501(4) (1) and 506 of MRP Rules thus provide that if a railway servant has been on foreign service immediately before quitting the railway service, then his emoluments should be taken at what they could have been had he not been on foreign service and deputation (duty) allowance drawn on foreign service has not to be taken into account for determining his emoluments for calculation of pensionary benefits.

The relevant provision of the IRE Code dealing with this aspect is Rule 2544-C [CSR 486 -C.] That rule reads thus:

"Rule 2544-C [CSR 486-C]: In respect of railway servants quitting service on or after the 15th June, 1968, "emoluments" shall mean the "pay" as defined in Rule 2003(21),

which the railway servant was receiving immediately before quitting service. Provided that the benefit of higher officiating pay for (ordinary) Gratuity/Death-cum-Retirement Gratuity will be given only if such pay was/ would have been drawn continuously for a period of not less than 22 days. "Average emoluments" shall mean the average of the emoluments as defined above calculated upon the last three years of service.

In the case of running staff emoluments for (ordinary)/Gratuity Death-cum-retirement Gratuity will also include the monthly average of running allowance drawn during the 365 days of running duty immediately preceding the date of quitting service limited to 75 per cent of the emoluments as defined above. For the purpose of calculation of average emoluments the actual amount of the running allowance drawn during the month limited to a maximum of 75 per cent of other emoluments as defined above shall also be taken into account.

NOTE:- (1) If a railway servant, immediately before his retirement or death, etc. has been absent from duty or on leave with allowances (including leave preparatory to retirement) or on foreign service or having been suspended but reinstated without forfeiture of qualifying service, his emoluments should be taken at what they would have been had he not been on such leave or foreign service or suspension.

Provided that the emoluments shall not be increased on account of increase in pay, not actually drawn and that benefit of higher officiating or temporary pay is given only if it is certified that he would have continued to hold the higher officiating or temporary appointment but for his proceeding on leave.

(2) Pay drawn in tenure appointments will count for persons governed by the Railway pension Rules, 1950." (Emphasis supplied)

It would be seen from Note(1) to CSR 486-Csupra) that if a railway servant immediately before his retirement or death etc. has been absent from duty or on leave with allowances [including leave preparatory to retirement] or on foreign service or having been suspended but reinstated without forfeiture of qualifying service, his 'emoluments' should be taken at what they would have been had he not been on such leave or foreign service or suspension as the case may be for commutation of his pensionary benefits. The provisions of Rule 2544 - C [CSR 486-C] read with Note (1) thereto, therefore, give the statutory backing to the guidelines contained in paras 501(4)(1) and 506 of MRP Rules (supra) and both can be harmoniously read together. The MRP Rules only provide what is statutorily provided in CSR 486-C of IRE Code. Thus, both under the CSR 486-C (supra) and the MRP Rules, deputation (duty) allowance received by an employee while on foreign service has not to be reckoned as "emoluments" for calculating pensionary benefit.

We are unable to accept the plea of the appellant that he could not be treated to be on foreign service while serving with the HOCL on the ground that HOCL is a Government of India Undertaking and is under the control of the Central Government and therefore its revenues would be general revenues of the State.

Rules 2003 (F. R. 9)(8) and 2003 (F. R. 9) (9) of the IRE Code define foreign service and general revenues and lay down as follows:

"Rule 2003 (F. R. 9)(8): Foreign Service means service in which a railway servant

receives his substantive pay with the sanction of Government (a) from any source other than the general revenues or (b) from a company working as State Railway."

"Rule 2003 (F. R. 9) (9): General Revenues mean the revenues of the President and includes the revenues of a State and the Railway Fund (when established)."

A plain reading of the above definition shows that "foreign service" means service in which a railway servant receives his pay and allowances, while on deputation, from any source other than from a company working as State Railway or from general revenue of the State and the expression 'general revenue' means the revenues of the President and includes the revenues of a State and the Railway Fund, if established.

6. The appellant was not receiving his pay while on deputation with the HOCL from the general revenue of the State or from any company working as State Railway. Even if HOCL is a Government of India enterprise, it can only be treated to be a Government of India undertaking but its revenues cannot be said to constitute the general revenue of the State within the meaning of Rule 2003 (F. R. 9) (supra) and, therefore, it is erroneous for the appellant to contend that the pay and allowances received by him while on deputation to HOCL were being drawn from the general revenue of the State. His service with HOCL was, unmistakably foreign service and in the matter of calculation of his emoluments for computation of terminal benefits on his quitting the railway service, the provisions relatable to foreign service were to be applied to his case.

7. The Tribunal relied on paragraph 2003 (F.R. 9) 21 (A) IRE Code, which defines 'pay' as including 'special pay' and 'personal pay' and after referring to Rule 2544-A [CSR 486-A] which provides:

"2544-A [CSR 486-A] : Save as otherwise provided in Rule 2544-B (CSR 486-B). In respect of officers retiring from service on or after the 1st November, 1959, the term "emoluments" means the emoluments which the officer was receiving immediately before his retirement and includes:

(a)

(b)

(c) Special pay attached to a post other than a tenure post, when the special pay has been sanctioned permanently and the post is held in a substantive capacity."

held that the 'special pay' of the appellant was required to be taken into account for calculating his pension subject to his fulfilling the conditions laid down in Rule 2544 B (CSR 486-B). This approach of the tribunal, in the facts of this case, was erroneous.

The aforesaid rule provides that in respect of officers retiring from service on or after the 1st November, 1959, the term "emoluments" means the emoluments which the officer was receiving immediately before his retirement and includes "special pay" attached to a post other than a tenure post, 'when the "special pay" has been sanctioned permanently and the post is held in a substantive capacity. The deputation (duty) allowance, is deemed to be "special pay" and subject to any exception would form the emoluments. The conditions for reckoning "special pay" as emoluments for pension are contained in Rule 2544-B [CSR 486-B] which inter alia provides that if an officer holding a permanent post in a substantive capacity is confirmed in such higher permanent post any time during the last three years of his service after having officiated in that post continuously for

three years or more, his emoluments for pension in respect of the higher post in any period, beyond three years of continuous service in that post shall be determined under Rule 2544-A [CSR 486-A] as if he held in substantive capacity a permanent post on a time-scale identical with that of higher post. The appellant was, in the instant case, not drawing "special pay" as envisaged by CSR 486-A and 486-B but "deputation duty allowance" while on 'foreign service' and that "special pay" while on 'foreign service' was required to be excluded for purposes of calculation of pension. The deputation (duty) allowance is not to be reckoned as "emoluments" for calculating pension where the deputation (duty) allowance has been received by the railway servant while on deputation to foreign service as in such cases the deputation (duty,) allowance is not attached to the post but is personal to the incumbent on foreign service. The Tribunal relied upon CSR 486-A and 486-B but over-looked the provisions of CSR 486-C, which are in the nature of an exception and exclude the deputation (duty) allowance to be reckoned as emoluments for calculating pension, where the same have been received by the railway servant while on deputation to foreign service. There appears to be sound logic behind the exclusion of deputation (duty) allowance received by a railway servant while on foreign service from being including the emoluments to calculate pension. The deputation of a railway servant to foreign service is a fortuitous assignment and since, there is no settled method of selection of the railway servant for being sent on deputation to foreign service, the life long benefit of having the deputation duty allowance included for calculation of pension may result in hardship and injustice to those railway servants who were not so sent on deputation even though senior or more qualified than the person sent on deputation. It is for this reason that while the deputationist may receive the deputation (duty) allowance for the services rendered on foreign service during the period they remain on deputation that deputation (duty) allowance has been excluded from being taken into account for purpose of calculation of pension.

8. Thus, for what we have said above, the allowance received by the appellant as deputation (duty) allowance from HOCL was rightly excluded from being taken into account for reckoning as "emoluments" for the purpose of calculation of pension of the appellant by the railways. The impugned order of the Tribunal does not, therefore, require any interference and the same is upheld though for reasons different than the one given by the Tribunal.

9. The appeal is, consequently, dismissed but we make no order as to costs.

Before parting with the judgment, we would like to point out that as an interim measure we had directed, vide order dated 10-1-1991, that the appellant's pension shall be computed by taking into account the deputation duty allowance as a part of emoluments and that in the event the contention of the appellant, not being accepted by this Court, appropriate adjustment shall be made. In case the pension has been worked out in accordance with our interim directions, the respondent shall be entitled and at liberty to make proper adjustments from his pensionary benefits hereafter; but the same should be done in such a manner that its rigour is diluted and the adjustments are distributed over a span of time. Appeal dismissed.

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