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

Date of decision: 14.05.2024

+ W.P.(C) 2792/2018

U.V. UTTAMCHANDANI

..... Petitioner

Through: Mr. V. K. Garg, Sr. Advocate with
Mr. Satish Kumar and Mr. K. S.
Rekhi, Advocates

versus

UOI AND ORS

..... Respondents

Through: Ms. Shiva Lakshmi, CGSC

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 28.04.2017 passed by the learned Central Administrative Tribunal (the learned Tribunal) in M.A. No. 1549/2017 in O.A. No. 321/2015. Vide the impugned order, the learned Tribunal has rejected the application filed by the petitioner seeking condonation of delay in filing the said OA and consequently rejected the OA vide the same order. The petitioner also assails the order dated 31.07.2017 vide which his review petition was dismissed by the learned Tribunal.

2. Before dealing with the rival submissions of the parties, we may note the factual matrix of the present matter as emerging from the record. On 13.09.1962, the petitioner was appointed as Section Officer/Junior Officer in CPWD, whereafter in continuation of his service with the CPWD, he joined the Western Railway w.e.f 16.02.1963. The petitioner was then selected by the Union Public Service Commission (UPSC) as an Assistant Engineer and



consequently again joined the CPWD on 02.02.1965. The petitioner was thereafter selected as an Executive Engineer (Civil) in the National Seeds Corporation where he joined on 06.05.1975 as a deputationist for one year, but, continued to serve there despite expiry of his deputation period. During this period when the petitioner was working with the National Seeds Corporation, he, in response to an open advertisement, applied for the post of Executive Engineer in the Delhi University where, he, upon being selected joined on 16.06.1978 and where he continued to work for about 20 years before he superannuated on 31.03.1998.

3. After joining the Delhi University, the petitioner requested the respondents, i.e., the CPWD to transfer their share towards pensionary and other benefits payable to him for his service between 13.09.1962 to 05.05.1976 with the respondents. Since, vide a communication dated 30.07.1990, the petitioner's prayer for granting him benefits for his aforesaid service of 13 years 8 months was rejected by the respondents, he approached the learned Tribunal by way of O.A No. 672 of 1991 seeking directions to the respondent to transfer the benefits of his service for the period between 13.09.1962 till 05.05.1976 to the Delhi University. The said O.A was allowed vide order dated 27.11.1992 and consequently, the respondent was directed to reckon the past service of the petitioner between 13.09.1962 till 05.05.1976 for the purpose of computing his retirement benefit on a pro-rata basis after verifying his qualifying service.

4. The respondent, unsuccessfully, assailed this order by way of SLP (Civil) No. 1500 of 1994 as it was dismissed by the Apex Court on 08.08.1994. The petitioner thereafter made repeated representations to the respondents for transfer of his retirement benefits on pro-rata basis to the



Delhi University. In response thereto, the respondents issued an order dated 24.04.1998 directing transfer of his retirement benefits to the Delhi University on a pro-rata basis. However, as no amount was transferred the petitioner was once again compelled to make a representation. Finally, vide an order dated 11.01.2000 the petitioner was informed that an amount of Rs. 7.18 lacs towards his retiral benefits would be transferred to the Delhi University. The said amount was, however, not transferred. Thus, yet another communication was issued by the respondents on 12.06.2003, strangely, this time informing the petitioner that the amount towards pro-rata retiral benefits had been reworked and it was found that only a sum of Rs. 11,540/- was payable.

5. Being aggrieved, the petitioner filed a contempt petition before the learned Tribunal, which was dismissed on the ground of delay vide order dated 24.09.2003. His review application filed before the learned Tribunal was also dismissed on 04.12.2009, whereafter his writ petition assailing the order dated 24.09.2003 was rejected by this Court on 10.09.2009. The petitioner, unsuccessfully, assailed this order before the Apex Court as it was dismissed on 04.12.2009. Thereafter both his review petition and the curative petition also came to be dismissed on 23.11.2010 and 15.02.2011 respectively.

6. The petitioner claims that he then sought information under the RTI Act regarding the reasons for the respondent's decision to reduce the amount towards his pro-rata pension from Rs. 7.18 lacs to Rs 11,540/-. Finding no plausible ground, it is only thereafter that he approached the learned Tribunal by way of O.A No. 321/2015, filed alongwith M.A. No. 1549/2017 seeking condonation of delay in filing the said O.A, which have been



rejected by the Tribunal without appreciating the fact that though the order dated 27.11.1992 passed in OA 672 of 1991 had become final and binding on the respondents, it was yet to be implemented by them. It is in these circumstances that the petitioner has approached this Court by way of the present writ petition.

7. Learned Senior counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that there was no delay on the part of the petitioner in approaching the learned Tribunal as he has been pursuing his claim for pro-rata retiral benefits since 1991. Further, the learned Tribunal has failed to appreciate that the only relief that the petitioner was seeking by way of the aforesaid O.A. was the implementation of the order dated 27.11.1992 passed by the learned Tribunal in the earlier OA No. 672/1991 in his favour. He submits that the respondents have, in their counter affidavit, sought to urge that the petitioner's service with CPWD was initially taken as 13 years 8 months whereas his service had to be treated as 9 years 7 months and 8 days. This averment of the respondents that the petitioner is entitled for pro-rata benefits only for a period of 9 years 7 months and 8 days is wholly misconceived, as the issue that the petitioner had served the respondents for the period between 13.09.1962 to 05.03.1976 already stood adjudicated by the learned Tribunal on 27.11.1992. The respondents cannot, therefore, be now permitted to urge that the petitioner's entire service between 13.09.1962 to 05.03.1976 was not to be taken into while calculating his past service in the CPWD for the purposes of computing his pro-rata retiral benefits. He, therefore, prays that the impugned order as also the respondent's communication dated 07.08.2003 be set aside and the



respondent's be directed to forthwith transfer the amount in terms of their communication dated 11.01.2000 to the Delhi University.

8. *Per contra*, Ms. Shiva Laxmi, learned counsel for the respondents while conceding that the O.A. could not be treated as barred by delay and laches, seeks to contend that the petitioner's past service for the purposes of calculating his pro-rata retiral benefits was rightly calculated as 9 years 7 months and 8 days, as against his claim of 13 years and 8 months, and therefore, the respondents were justified in reducing the amount from Rs. 7.18 lacs to Rs. 11,540/- payable towards his pro-rata retiral benefits. She submits that even though the issue of counting of petitioner's past service has been crystallized by way of the order dated 27.11.1992, the said order in itself granted liberty to the respondents to calculate the petitioner's total service after verifying whether he remained on any extraordinary leave during the said period as the same, was to be excluded from his service. Since upon verification of the record, it was found that the petitioner had availed extra ordinary leave without medical certificates for 175 days between the period 12.09.1974 to 05.03.1976, the respondents were justified in excluding the said period while computing his total period of service for which pro-rata pensionary benefits were required to be transferred.

9. Having considered the submissions of the learned counsel for the parties and perused the records, we find that both parties are *ad idem* that the respondents were required to transfer to the Delhi University the amount towards the pro-rata pensionary benefits, as payable to the petitioner. It also emerges that it has been the petitioner's consistent case, right from 1992, that his service of 13 years 8 months between the period 13.09.1962 to



05.03.1976, was to be counted. The respondents do not deny that the learned Tribunal had accepted this stand of the petitioner but had granted liberty to the respondents to verify the record to examine as to whether he was, during this period, ever on leave, the period whereof had to be excluded from his service.

10. We find that while the petitioner does not deny that the period of 175 days between 12.09.1974 to 05.03.1975, during which he was on extraordinary leave without medical certificate has to be excluded from his 13 years 8 months service, he has urged that the respondent is incorrect in arbitrarily reducing this period to 9 years 7 months and 8 days. From the affidavit filed by the respondents, we have tried our best to understand as to how the petitioner's service of 13 years 8 months could be reduced to 9 years 7 months and 8 days by deduction of 175 days towards extra ordinary leave which he availed. However, we have not been able to ascertain any reason for this arbitrary reduction of the respondent's 13 years 8 months service to 9 years 7 months and 8 days of service. Moreover, learned counsel for the respondents has also not been able to explain as to how the exclusion of 175 days from the period of 13 years 8 months would lead to 9 years 7 months and 8 days. There, thus, seems to be a grave error and miscalculation on the part of the respondents. We, therefore, have no other option but to accept the petitioner's plea that his service has to be counted as 13 years 8 months less 175 days, i.e, 13 years 2 months and 15 days and not 9 years 7 months and 8 days.

11. We, therefore, set aside the order dated 12.06.2003 and direct the respondent to pay the amount towards pro-rata pensionary benefits of the petitioner by taking his service as 13 years 2 months 15 days. The payment



in terms of this order will be transferred to the Delhi University within 12 weeks. Since, the petitioner despite having superannuated on 31.03.1998 has been unjustifiably denied his pro-rata retiral benefits payable by the respondents, the respondents will also pay to the petitioner interest @ 6% per annum, which interest will be payable w.e.f 01.07.1998 i.e. after 3 months from the date of his superannuation.

12. For the aforesaid reasons, the impugned order passed by the learned Tribunal is set aside and the writ petition is allowed in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 14, 2024/akr