

PETITIONER:
BHASKAR GAJANAN KAJREKAR

Vs.

RESPONDENT:
ADMINISTRATOR, DADRA AND NAGAR HAVELI AND ORS.

DATE OF JUDGMENT 23/02/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
YOGESHWAR DAYAL (J)

CITATION:
1993 SCR (2) 60 1993 SCC (3) 237
JT 1993 Supl. 43 1993 SCALE (1) 683

ACT:
Civil Services :
Civil Services (Pension) Rules, 1972 Rule 13-Pension Retiree not given pension as he was not confirmed in any post even after 23 years of service-On the availability of permanent post-Entitlement to confirmation-Payment of pension to the Retiree treating him as a confirmed employee-Directions issued.

HEADNOTE:
The appellant retired in 1977 after putting in 23 years of service. But he was not given pension on the ground that throughout his service he was working on officiating basis and was never appointed substantively to any of the posts held by him. The appellant challenged the denial of pension to him before the Central Administrative Tribunal. The Tribunal held that since the appellant retired from service without holding lien on any substantive post, he was not entitled to pension under Rule 13 of the Central Services (Pension) Rules, 1972. The application of the appellant was disposed of ex-parte by the Tribunal and his application for restoration and hearing was also rejected. Against these orders of the Tribunal appellant preferred the present appeals.

The Respondents contested the appeals on the ground that the Departmental Promotion Committee did not recommend the appellant's confirmation since two departmental enquiries were initiated against him, resulting in deduction of Rs. 4,000 from his gratuity, by way of punishment.

Allowing the appeals, this Court,

HELD: 1. Admittedly the findings in the two enquiries were never communicated to the appellant during the period of his service. Those were served on him only after retirement. The question of his confirmation which was due in the year 1967 could not have been linked with the enquiries which were initiated at a much later stage. The Departmental Promotion Committee

61

tee should have considered the appellant for confirmation on the basis of the record of the appellant as existed in the year 1967/1968. There is no material on record to show that the service record of the appellant prior to 1970 was

adverse in any manner. Even the Departmental Promotion Committee found the confidential reports of the appellant for the last three years as good. On the availability of a permanent post of Chief of Police on June 14, 1967 the appellant was entitled to be confirmed against the said post. It was wholly arbitrary on the part of the respondents to have deferred the question of confirmation of the appellant on the ground that there were no Recruitment Rules. The appellant having served the respondents for about thirteen years, on June 14, 1967 when the post of Chief of Police was made permanent and there being nothing adverse against him at that point of time, he was entitled to be confirmed in the said post. In that view of the matter the appellant was a confirmed employee when he retired from service on July 31, 1977. [63D-G]

2. The respondents are directed to treat the appellant as having been retired as a confirmed employee and fix his pension and other post-retiral benefits on that basis. The respondents are further directed to complete the pension case of the appellant within three months and pay him all the arrears of the pension within two months thereafter alongwith 12% interest on the said arrears. [63H; 64A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 724-725 of 1992.

From the Judgment and Order dated 13.11.90 & 10.8.90 of the Central Administrative Tribunal, New Bombay in M.P. No. 855/90, & O.A. No. 799 of 1989.

N.M. Ghatate, Anand Prasad and S.V. Deshpande for the Appellant.

T.C. Sharma and Ms. A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted in both the matters.

B.G. Kajrekar joined service as Chief of Police on August 1, 1954 in Dadra and Nagar Haveli. He worked in that capacity upto April 19, 1966. Thereafter he was sent on deputation to the Central Reserve Police,

62

Neemuch (Madhya Pradesh). He came back to his original post in Dadra and Nagar Haveli on November 17, 1967 and worked as Chief of Police upto April 6, 1971. He was transferred to Delhi Armed Police on April 7, 1971 where he worked as Deputy Superintendent of Police till his retirement on July 31, 1977. He has thus, put in about twenty three years of service.

Kajrekar was not given pension on the ground that throughout his service he worked on officiating basis and was never appointed substantively to any of the posts held by him. Kajrekar challenged the action of the respondents, denying pension to him, before the Central Administrative Tribunal, Bombay. The Tribunal rejected his application on the ground that he retired from service without holding lien on any substantive post and as such was not entitled to pension under Rule 13 of the Central Civil Services (Pension) Rules, 1972 (the Rules). The application of Kajrekar was disposed of ex-parte by the Tribunal and his prayer for restoration and hearing was also rejected. These appeals by way of special leave petitions are against the orders of the Central Administrative Tribunal.

It is not disputed that the post of Chief of Police under Dadra and Nagar Haveli Administration was declared permanent with effect from June 14, 1967. On that date the appellant

had already put in about thirteen years of service but his case for confirmation was not considered on the ground that there were no Recruitment Rules for the post in existence. The Recruitment Rules for the post of Chief of Police under the Administration of Dadra and Nagar Haveli came into force on January 19, 1980. The said Rules provided "by transfer on deputation" as the method of recruitment to the post of Chief of Police. The Recruitment Rules have no relevance to the question of confirmation of the appellant as he had retired from service on January 31, 1977 much before the coming into force of the Recruitment Rules. It was incumbent on the respondents to have considered the question of confirmation of the appellant before his retirement, specially when he was being retired after serving the respondents for twenty three years. It was wholly arbitrary on the part of the respondents to have kept the appellant as an unconfirmed employee for a period of twenty three years on the ground that there were no Recruitment Rules for the post he was holding.

The Union Territory of Dadra and Nagar Haveli in its counter filed in this Court has stated that after the publication of the Recruitment Rules

63

a Departmental Promotion Committee was convened on July 4, 1981 for considering the question of confirmation of the appellant as Chief of Police. The Departmental Promotion Committee did not recommend the appellant for confirmation on the ground that during the course of his service, two departmental enquiries were instituted against the appellant. The enquiries could not be completed before the appellant's retirement and the findings were made available thereafter. The proceedings of the Departmental Promotion Committee further show that as a result of the enquiries Rs. 4,000 was to be deducted from the gratuity amount of the appellant as a measure of punishment. The Departmental Promotion Committee found that the confidential reports of the appellant for the last three years were good but the Committee declined to recommend confirmation because of the two enquiries.

It is not disputed that the findings in the two enquiries were never communicated to the appellant during the period of his service. Those were served on him only after retirement. The question of his confirmation which was due in the year 1967 could not have been linked with the enquiries which were initiated at a much later stage. The Departmental Promotion Committee should have considered the appellant for confirmation on the basis of the record of the appellant as existed in the year 1967/1968. There is no material before us to show that the service record of the appellant prior to 1970 was adverse in any manner rather the averments made by the appellant in the rejoinder to the effect that there was nothing adverse against him on the record prior to 1971, have not been controverted. Even the Departmental Promotion Committee found the confidential reports of the appellant for the last three years as good. We are of the view that on the availability of a permanent post of Chief of Police on June 14, 1967 the appellant was entitled to be confirmed against the said post. It was wholly arbitrary for the respondents to have deferred the question of confirmation of the appellant on the ground that there were no Recruitment Rules. We, therefore, hold that the appellant having served the respondents for about thirteen years on June 14, 1967 when the post of Chief of Police was made permanent and there being nothing adverse against him at that point of time, he was entitled to be

confirmed in the said post. In that view of the matter the appellant was a confirmed employee when he retired from service on July 31, 1977.

We, therefore, direct the respondents to treat the appellant as having

64

been retired as a confirmed employee and fix his pension and other post-retiral benefits on that basis. We further direct the respondents to complete the pension case of the appellant within three months from today and pay him all the arrears of the pension within two months thereafter alongwith 12% interest on the said arrears. We allow the appeals with costs which we quantify as Rs. 10,000.

G.N.

Appeals allowed.

65

