
(2014) 03 DEL CK 0023
In the Delhi High Court
Case No : Writ Petition (C) 2546 of 2011

Bank of Baroda	Vs	APPELLANT
Bob Employees Union		RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 9A

Citation : (2014) 208 DLT 559 : (2014) 141 FLR 817

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : R.R. Kumar and Ms. I. Abenla Aier, for the Appellant; Inder Jit Singh, for the Respondent

Final Decision : Allowed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition by the Bank of Baroda (Bank, in short) is to the award dated July 16, 2010 of the Central Government Industrial Tribunal (Tribunal in short) in I.D. No. 11/2006 whereby the Tribunal has held the circular issued by the bank for pay fixation, as neither justified nor legal. It has further called upon the bank to restore the pay of the Armed Guards at the stage, on which, they would have received their pay in case circular dated January 07, 1993 would not have been in existence. The brief facts are, the Ex-Servicemen are re-employed by the petitioner-Bank as Armed Guards. The salary received by the Ex-Servicemen, at the time of discharge from Armed Forces, is to be protected while fixing their salary by bank at the time of their re-employment. Their basic pay, dearness allowance, good service/conduct pay, drawn at the time of their discharge from Armed Forces are to be taken into account while protecting their salary on their appointment in the bank.

2. A circular dated November 07, 1986 was issued by the bank, highlighting the formula to be followed for determination of basic pay of Ex-Servicemen/Armed Guards in the bank. Special allowance was paid to them after protection of their

pay as referred above. It was not considered as part of their basic pay, for the purposes of protection of their pay received by them at the time of discharge from Armed Forces. In January 1993, instructions were received by the bank from Ministry of Finance, Banking Division, Government of India to the effect that special allowance forms part of the basic pay and it should be considered while re-fixing pay of Armed Guards. In compliance of the said circular, pay of the Armed Guards, re-employed by the bank was re-fixed. The effect of the re-fixation was, the Armed Guards received lesser emoluments than those which were received by them in terms of the circular dated 07th November, 1986.

3. Industrial Dispute was raised by the Union before the Conciliation Officer. Since the conciliation proceedings failed, failure report was submitted to the appropriate Government by the Conciliation Officer. The appropriate Government, in terms of the order dated May 25, 2000 declined to refer dispute for adjudication. A writ petition was filed by the Union in this Court, assailing order dated May 25, 2000. The writ petition was dismissed on the ground of concealment. In an intra-court appeal, LPA No. 439/2006 came to be filed by Union, which was disposed of by the Division Bench on December 19, 2005, wherein the Division Bench held that the so-called settlement is not a settlement in strict sense of law but was mere a understanding between the parties. Pursuant to the direction of the Division Bench, a reference was made by the appropriate Government vide order dated April 19, 2006 on the following terms:

Whether the instructions/guidelines/clarifications issued by the management of Bank of Baroda in the matter of fixation of pay of Ex-Servicemen re-employed as armed guards in Public Sector Banks is justified and legally valid? Whether the allegations of Bank of Baroda Employees Union that the service conditions of armed guards were altered to their disadvantage by the management is correct. If so, what relief is the disputants/union concerned is entitled to?

4. It was the stand of the Union that it composed of the award staff, viz. clerks, cashiers, peons, armed guards, watchmen, sweepers and other categories. Service conditions of the workmen engaged in the bank are governed by the Bi-partite Settlements entered into between the parties. Clause 5.6 of 1st Bi-partite Settlement provides that special allowance is to be paid to certain categories of workmen, to compensate them for performance or discharge of certain additional duties and functions requiring greater skills or responsibilities, over and above routine duties and functions of a workman in the same cadre. It was their case that special allowance, by no stretch of imagination, can be considered as basic pay or in the nature of basic pay since it is payable for performance or discharge of certain additional duties and functions requiring greater skill and responsibilities over and above routine duties of the cadre.

5. According to the Union, the fitment formula for Ex-Servicemen, re-employed as Armed Guards by the bank, was circulated on August 04, 1984 and November 07, 1986. In the Circular dated November 07, 1986, it was provided that pay fixation on re-employment of Ex-Servicemen would be effected by protecting

their basic pay plus dearness allowance drawn by them at the time of their release from Armed Forces. Basic pay plus dearness allowance, with reference to the protection was to be determined after deducting dearness allowance admissible to bank employees and relevant stage of basic pay was to be ascertained after deducting dearness allowance admissible, from the figure protected. The aforesaid circular was given effect from July, 1983. In other words, all the Armed Guards employed after 01st July 1983 or thereafter, became entitled to the benefits flowing from that circular. It may be necessary to state here that special allowance paid to the Armed Guards was not taken into account for arriving at the final fitment for protecting the pay last drawn by the Ex-Servicemen at the time of their discharge from Armed Forces.

6. The Union referred to the circular dated January 07, 1993 issued by the bank, detailing that a fitment formula special allowance would be taken into consideration, while protecting last pay drawn by Ex-Servicemen/Armed Guards. The effect of the fitment formula was that the salary got reduced of a large number of Armed Guards ranging from Rs. 400/- to Rs. 1000/- per month. According to the Union, special allowance is no pay. They further stated that circular is arbitrary and unjustified.

7. Further, it was the Union's case that since circular dated January 07, 1993 effects the conditions of service of the Armed Guards and the said services could not be effected without giving notice u/s 9A of the Industrial Disputes Act, 1947 (Act in short).

8. The case of the petitioner-Bank was, the reference was not maintainable. There was a Memorandum of Understanding entered between the bank and the Union during conciliation proceedings and said appropriate Government was not competent to make reference of the dispute during currency of the period of the said Memorandum of Understanding. In terms of the circular dated January 07, 1993, a special allowance paid to the Armed Guards could be treated in the nature of basic pay. Pay fixation of Armed Guards, who joined service of bank on or before March 13, 1992 was to be fixed again by re-opening their cases and recovery of excess payment, if any, made to them was to be waived, since fixation of pay of Ex-Servicemen Armed Guards was done under policy decisions and guidelines of the Government of India, which are statutory in nature, hence the provisions of Section 9A of the Act are not applicable to it. The bank, in its written statement conceded to the fact that during the conciliation proceedings, it was agreed that the bank would comply the provisions of Section 9A of the Act in the case of concerned Armed Guards and restore the old wage structure from the date of issue of notice of change, where-after the Union would not raise any further dispute in conciliation. In terms of the above understanding, the bank had given notice u/s 9A of the Act dated 12th/13th April, 1996 to the concerned workmen, who gave their replies wherein the Armed Guards have stated that the notice was not in terms of Section 9A of the Act and there cannot be any change in their wages. Insofar as the merit of the case was concerned, the petitioner-

Bank pleaded that special allowance is a pay which attracts Dearness Allowance, House Rent Allowance and also reckoned for payment of all terminal benefits viz. Provident Fund, the pension and the leave encashment etc. The petitioner-Bank had also pleaded that the circular dated January 07, 1993 has no retrospective effect; refixation of pay was done in July 1996 after giving opportunities to the concerned Armed Guards u/s 9A of the Act; the Bank has simply implemented the directives of the Government of India. The salary of an employee was always subject to change and modification in terms of the awards, settlements and Government guidelines.

9. The Union produced two witnesses and the petitioner-Bank produced one witness. The Tribunal had concluded that the circular on the strength of which, the petitioner-Bank intends to modify wage structure of Armed Guards to their detriment, cannot be said to be justified or legal. Meaningfully read, the Tribunal was of the view that any change in the service conditions in violation of provision of Section 9A of the Act is illegal.

10. Mr. R.R. Kumar, learned counsel appearing for the petitioner-Bank has taken me through the circular dated January 07, 1993. According to him, the intent of the circular was to include, the component of special pay to be taken into account while protecting the last drawn basic pay and dearness allowance thereon at the time of retirement/discharge from service of Armed Forces as the special allowance is in the nature of basic pay. He has also submitted that in terms of understanding arrived at before the Conciliation Officer, a notice was given to the Armed Guards. He would state that the order of the Tribunal is unjustified and the Tribunal could not have held the circular illegal on a mere technicality that notice as contemplated u/s 9A has not been given. He would submit that even in the alternative that no notice would be required to be given as change is effected pursuant to a settlement and even if the understanding arrived at on April 04, 1996 is not construed as a settlement, then also, under Clause (b) of Proviso to Section 9A of the Act, the circular is in the form of a rule which have been notified in this behalf by the appropriate Government.

11. Mr. Inder Jit Singh, learned counsel appearing for the respondent-Union, on the other hand, would justify the award. According to him, a comparison of notice issued by the petitioner-Bank and the performa given in the Rules would show that notice which was given to the Armed Guards and the one which has been prescribed by way of Form under Rule 34 of the Industrial Disputes (Central) Rules, 1957 [Rules in short] are not same. He would rely upon the following Judgments in support of his contention:

1. Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others,
2. Desh Raj Vs. Delhi Jal Board,
3. Shankar Lal & Ors. Vs. U.O.I. & Ors., CWP-109/1998-Punjab and Haryana High Court.

4. Punjab National Bank & Anr. Vs. Shankar Lal and Ors., C.A. No. 3186-3201/2000 (SC).

12. I have heard the learned counsel for the parties. Insofar as the submission of Mr. R.R. Kumar, Clause (a) of proviso to Section 9A of the Act would be applicable as the change effected is pursuant to a settlement concerned, the said submission is liable to be rejected. Moreso, in view of the conclusion of the Division Bench of this Court in L.P.A. No. 539/2003 wherein the Division Bench of this Court has held, "from the order dated 04.04.1996, it is evident that nothing has been settled, but, it was agreed between the parties that the old pay structure shall be restored and then a notice for a change shall be issued u/s 9A". In view of this conclusion, it cannot be construed that the order dated April 04, 1996 is a settlement. Further, what was agreed was only giving notice u/s 9A of the Act. No understanding was arrived at with regard to pay protection. Insofar as the applicability of Clause (b) of proviso to Section 9A in the facts is concerned, the same has also no applicability as the said clause contemplates rules and regulations as have been notified by the Central Government. It is not the case of the petitioner that the circular dated January 07, 1993 though issued by the Central Government, has been notified. The only question which has to be seen and determined as has been done by the Tribunal whether the notice issued to the Armed Guards is a notice as contemplated u/s 9A read with Rule 34 and Form E and any prejudice has been caused to the Armed Guards for non-issuance of a notice as contemplated u/s 9A read with Rule 34 and Form E of the Rules. Rule 34 of the Rules stipulates as under:

34. Notice of change.--Any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule 1 [to the Act] shall give notice of such intention in Form E.

The notice shall be displayed conspicuously by the employer on a notice board at the main entrance to the establishment in the Manager's Office:

Provided that where any registered trade union of workmen exists, a copy of the notice shall also be served by registered post on the secretary of such union.

From the above Rule, it is seen that that an employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in IVth Schedule to the Act, shall give notice of its intention in Form E. The notice is required to be displayed conspicuously by employer on the notice board at the main entrance to the establishment in the Manager's Office. That apart, the notice was also to be served by the Registered Post on the Secretary of such Union. In the present case, a comparison of the notice issued to the Armed Guards shows that the same is a Section 9A notice. The notice also reveal that the petitioner-Bank had mentioned that the notice is being given for salary fixation in terms of the guidelines of the Bank, approved by the Government of India. The notice also stipulates the salary after re-fixation. It is

true that the copy of the notice may not have been sent to the Secretary of the Union, Assistant Labour Commissioner (Central) and Regional Labour Commissioner (Central). The question which would really fall for consideration is whether the copy having not been sent to the aforesaid three functionaries would make the notice bad. The purpose of the notice at least in the facts of this case is to make aware the Armed Guard, the likely change in the pay in view of the implementation of the circular issued on January 07, 1993. The notice was very explicit stipulating the heads under which the change is going to be effected. In fact, the submission made on behalf of the Union is only with regard to the procedural aspects related to the notice u/s 9A inasmuch as the copy of the notice was not put on the notice board; notice has not been served by the Registered Post on the Secretary of the Union. It is not disputed that notices were actually sent to the Armed Guards concerned. The procedure to that extent having not been followed, had not caused any prejudice to the Armed Guards in question. It is not disputed that the purpose of affixing notice on the notice board in the Manager's Office and sending the same to the Secretary of the Union is to make the Union aware and the workers' cause can be espoused by the Union and further the decision is not unilateral. It is not disputed that immediately thereafter on June 27, 1996, the Union through General Secretary, referring to the notice u/s 9A, wrote to the General Manager, Northern Zone, Bank of Baroda, Zonal Office about deferring the payment of salary in terms of the notice u/s 9A of the Act. In other words, it is not the case of the Armed Guards or the Union that in the absence of Union receiving the notice, prejudice has been caused which effected the espousal of their case by the Union. It appears that the Tribunal has overlooked this particular aspect and held that the procedure u/s 9A has not been followed. The reliance was placed by the learned counsel for the respondent on the Judgment in Calcutta Port Shramik Union's case (*supra*) wherein the Supreme Court held that the Courts, when looking into the correctness of the award, should sustain it as far as possible and awards not be struck down on hyper-technical grounds. In this case, the award as given by the Tribunal is an erroneous one on a hyper-technical interpretation of Section 9A of the Act, which in view of this Court, is not tenable. In the case as relied upon, the Single Judge of the High Court had set aside the award of the Tribunal on the ground that the Tribunal has exceeded the terms of reference. It was in that context, the Supreme Court has said so that the award should not be struck down on hyper technical grounds. This case is not of such a nature. It is more on the interpretation given to Section 9A of the Act and the procedure followed there-under.

13. Insofar as the Judgment in *Desh Raj & Ors.* (*supra*) is concerned, the Single Judge of this Court has held that whenever there is a conflict between the administrative instructions or circulars and Statutory rules or provisions, the instructions/policies to the extent of repugnance or conflict have to yield to statutory rules. There is no dispute to such a proposition of law. It is not understood in what manner, the said proposition would fit in the facts of the

case. No Statutory rule has been brought to my notice which is at variance with circular dated January 07, 1993. If the field of pay fixation, that too, taking into consideration special allowance for the purpose of pay protection, if not occupied by any settlement or a Statutory rule/regulation, then the Bank was within its right to implement a circular issued by the Central Government with regard to pay fixation/pay protection in the manner in which they did in the present case. Insofar as the Judgments of Shankar Lal (supra) and Punjab National Bank (supra) are concerned, both has no applicability in the facts of this case. The issue decided by the Punjab and Haryana High Court in Shankar Lal's case (supra) was whether the emoluments can be retrospectively altered to the disadvantage of an employee without the grant of any opportunity. The High Court had agreed with the petitioner, holding that since the action of the bank entails civil consequences, such an action need to be taken after giving an opportunity to the concerned employee. The Supreme Court dismissed the SLP filed by the Bank.

14. One more aspect which requires consideration by this Court is whether the circular dated January 07, 1993 violates the Bipartite Settlement. I find that Tribunal has held that the circular violates the provisions of Bipartite Settlement. It is not clear that how and in what manner the circular issued by the Bank violates the Bipartite Settlement. Suffice would it be to note that Bipartite Settlement defines pay for the purpose of Dearness Allowance, House Rent Allowance and Superannuation including special pay as well. The special pay is granted to an Armed Guard for performing arduous duties and to one, who carries weapon with him. The issue before the Tribunal was not whether an Armed Guard is entitled to the special pay or not or under what circumstances an Armed Guard is liable to get the special pay, but the issue was whether for the purpose of pay protection of an Armed Guard who is an Ex-Serviceman, special pay need to be taken into consideration. The consideration of special pay for the pay protection of an Ex-Serviceman is not covered by any of the provisions of the Bipartite Settlement. So, the Tribunal has erred in concluding that the circular violates the Bipartite Settlement. In fact, the Bipartite Settlement is silent on the aspect of pay protection after taking into consideration the special pay. Even on this ground, the Tribunal has erred in coming to the aforesaid conclusion. Further, the Tribunal has also erred in interfering in an issue related to a pay fixation, which is purely a policy matter which should be left to the employer concerned. The Supreme Court in the case reported as K.T. Veerappa and Others Vs. State of Karnataka and Others, has held as under:

13. He next contended that fixation of pay and parity in duties is the function of the Executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance in the case of State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, and Union of India (UOI) and Another Vs. S.B. Vohra and Others, . There is no dispute nor can there be any to the principle as settled in the case of

State of Haryana & Anr. v. Haryana Civil Secretariat Personal Staff Association (supra) that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well-settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

14. In S.B. Vohra's case (supra), this Court dealing with the fixation of pay scales of officers of the High Court of Delhi (Assistant Registrars) has held that the fixation of pay scale is within the exclusive domain of Chief Justice, subject to approval of President/Governor of the State and the matter should either be examined by an expert body or in its absence by Chief Justice and the Central/State Government should attend to the suggestions of the Chief Justice with reasonable promptitude so as to satisfy the test of Article 14 of the Constitution of India. Further, it is observed that financial implications vis-?-vis effect of grant of a particular scale of pay may not always be a sufficient reason and differences should be mutually discussed and tried to be solved.

15. In view of the conclusion above, I am of the view that the award of the Tribunal is unsustainable and the same is liable to be set aside. I order accordingly. The writ petition is allowed, with no order as to costs.

CM No. 5707/2011

Since I have allowed the writ petition, the present application is disposed of as being infructuous.