

(2006) 03 DEL CK 0142
In the Delhi High Court
Case No : Writ Petition (C) 2587 of 2005

B.K. Gupta

APPELLANT

Vs

Cantonment Board and Others

RESPONDENT

Date of Decision : 30-03-2006

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 16
Central Civil Services (Pension) Rules, 1972 — Rule 69

Citation : (2006) 130 DLT 184 : (2006) 88 DRJ 672

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sudarshan Rajan, for the Appellant;

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This petition was heard on 20th March, 2006. Submissions had been made on behalf of respondents though the order-sheet for the date does not disclose appearance of counsel for the respondents.

2. The petitioner has claimed a direction to the respondents to correctly calculate the provisional pension fixed.

3. The facts emerging from the pleadings of the parties are that the petitioner joined the respondent No. 1 in its school, as an Assistant Teacher in the year 1963. He was promoted as Head Master in 2001. On 17.5.2001 the petitioner was arrested pursuant to a First Information Report. He was Therefore placed under suspension by order dated 24th September, 2001. The petitioner was admitted on bail on 19.12.2001. After he represented, the respondent Board granted subsistence allowance admissible to him on 4.1.2002. It is undisputed case of the parties that later on 6.6.2002 subsistence allowance was increased to 75% of the salary and emoluments.

4. The petitioner retired after attaining the normal age of superannuation on 31.3.2003. He had apparently moved the authorities for release of his provisional

pension. Since nothing happened, the petitioner caused a legal notice to be issued on 29.5.2004; he approached the Court by filing a writ petition, namely, W.P.(C) 11255/2004. It is averred that the calculation of provisional pension was based on subsistence allowance last drawn, by treating that to be the last pay drawn and not the pay admissible on the date immediately preceded the date of the suspension. Therefore, the claim in this petition is restricted to a direction that proper provisional pension in terms of Rule 69 of the CCS Pension Rules - admittedly applicable to the respondents - is fixed and the appropriate differential amounts are released.

5. Learned counsel for the petitioner had relied upon Rule 69 to say that the principle for fixing provisional pension is the same as in the case of full pension, namely, calculation of qualifying service. However, the difference between the two that in where an employee faces disciplinary proceedings or is placed under suspension, the qualifying service up to the date on which the employee placed under suspension would be relevant. It was contended that the entire qualifying period up to the date of suspension has been taken into consideration and the amount would have to be on the basis of last pay drawn on the date of suspension, for purposes of provisional pension.

6. The respondent Board does not deny the factual matrix. It had, however, disputed the maintainability of these proceedings to say that after issuance of the pension order on 13th July, 2004, the petitioner had withdrawn the earlier writ petition without seeking liberty to initiate fresh proceedings. It was also submitted that there is no infirmity in the provisional pension fixed since the last emoluments were the subsistence allowance paid on the date of the petitioner's retirement, namely, 31.3.2003. The respondent board took that as the basis and fixed the provisional pension.

7. Coming to the first objection raised by the respondents, the order dated 13.7.2004 by which the petitioner was intimated about release of provisional pension merely discloses that an amount of Rs. 55,410/- for the period 1.4.2003 to 30.6.2004 was released. However, the order is silent as to the calculation or the basis on which the provisional pension was fixed. It appears (and this position has not been disputed) that the petitioner calculated the entitlements on the basis of amounts received and the information supplied and was able to gather that the provisional pension was premised upon the subsistence allowance drawn by him at the time of the superannuation. Admittedly, the order dated 13.7.2004 was not questioned in the previous writ proceedings. At that stage, the petitioner's grievance was that he had not been given paid amount although he had superannuated from the services. This coupled with the fact that the respondents had not disclose the basis of pension fixation, to my mind, is of critical importance. If the order had even somewhere hinted that pension was fixed on the basis of subsistence allowance drawn, it was open for the respondents to contend that the present proceedings are not maintainable. In the absence of such a situation and also in view of the fact that the order of 13th

July, 2004 had not been issued at the stage when the petitioner approached this Court earlier, I find no merit in the respondents objection.

8. As far as the merit of the case is concerned, Rule-69 which is admittedly applicable reads as follows:

Rule 69: Provisional pension where departmental or judicial proceedings may be pending:

In case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continues, the Head of Office shall draw and pay the provisional pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government Servant concerned, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension. The provisional pension shall be paid by the Head of Office for the period of six months unless the period is extended by the office responsible for issuing pension payment order. No gratuity shall be paid to the Government Servant until the conclusion of the proceedings and issue of final orders thereon. If the departmental proceedings have been instituted under Rule 16 of the CCS (CCA) Rules for imposing any of the minor penalties, the payment of Retirement Gratuity shall be authorized to be paid to the Government Servant. Payment of provisional pension thus, shall be adjusted against final retirement benefits sanctioned but no recovery shall be made where the pension finally sanctioned is less than the provisional pension.

9. The normal Rule for fixation of pension is that an employee's last drawn emoluments is the basis; the total qualifying service put in by the public servant is factored into while calculating the pension. In the case of provisional pension, however, the consideration is slightly different. Provisional pension (as the expression suggests) is a tentative fixation in view of certain contingencies such as pendency of departmental or criminal proceedings which lend some uncertainty as to the officials entitlement to a continued status as a public servant. Consequently, the rule making authority in its wisdom decided that such employees who face cloud as to their entitlement should not be released full pension. However, the previous period of service put in by them is not completed obliterated since in the ultimate eventuality of the employees being exonerated or acquitted, if the retired official is made to wait for pension, it would act to his great prejudice. Therefore, the rule for provisional pension provides that it should be based upon the qualifying service up to the retirement of the Government servant or in the case of suspension, on the date of retirement up to the date immediately preceding the date on which was placed under suspension. Absent this consideration and the expressions in Rule 69, the respondents' stand might not have been considered arbitrary. However, Rule 69 expressly provides for the condition where a suspended employee's pension can be provisionally fixed as well as prescribes the manner in which such pension has to be fixed. Therefore,

the submission that subsistence allowance last drawn on the date of retirement should be deemed to be the emolument upon which the provisional pension has to be fixed is without substance. Consequently, the respondents were duty bound to follow Rule 69 and fix the provisional pension on the basis of salary drawn by the petitioner as on the date of his being placed under suspension.

10. In view of the above findings, a direction is issued to the respondents to re-fix the provisional pension in terms of Rule 69 of the CCS Pension Rules by taking into consideration the last pay drawn as on the date of petitioner's suspension order namely, 24.9.2001. The respondent is directed to pass a provisional re-fixation order within eight weeks from today and also ensure that differential amounts on account of such exercise are disbursed within the same period.

11. The writ petition is allowed to the above extent. No costs.