
(2002) 10 DEL CK 0092

In the Delhi High Court

Case No : Civil Writ Petition No. 1088 of 1998

Brig. P.N.S. Narayanan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Citation : (2003) 66 DRJ 74 : (2003) 1 SLJ 94

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : S.K. Taneja and L.B. Rai, for the Appellant; Rajeev Shakdhar, for the Respondent

Final Decision : Allowed

Judgement

R.S. Sodhi, J.—This writ petition is directed against the order No. M/1060/85 dated 27th March, 1985 reducing the pension of the petitioner by Rs. 160/-. Brief facts of the case as stated in the petition are that:

"The petitioner was working as a substantive Brigadier in the Indian Army and had served the nation with extreme dedication and devotion for 29 years continuously, prior to his retirement from the Army on being selected as General Manager in the National Hydro Electric Power Corporation (NHPC), a Government of India concern.

The petitioner joined NHPC after taking retirement from the army and simultaneously opted for permanent absorption in NHPC, under the extant rules as laid down by the Ministry of defense vide their letter No. 6(1)81/D (Pensions/ Services) dated 12th July, 1982. After his retirement from Army, petitioner was sanctioned a pension of Rs. 1,175/- per month (subsequently corrected at Rs. 1,250/- p.m.) by the Controller of defense Accounts (Pensions) vide their CDA Pension PPO No. M/Prov/2950/82 and Corr PPO No. 8386/82. The pension was in consonance with the entitlement for a Brigadier with 29 years service as laid down in the defense Services Regulation Pension (Army), as existing in 1982.

According, the petitioner drew normally commuted percentage amount and balance as monthly pension. The covering sanction for retirement from Army and absorption in NHPC was accorded by the Government of India vide Letter No. A/49738/PNS/AG/PS 4(e) 2965/A/D (Pension Services) dated 9th October, 1984. The sanction letter as above covered the petitioner's option either for receiving pension under the normal rules, including commutation of a portion of pension or to receive lump sum amount worked out with reference to the commutation table of the whole pension as promulgated in Ministry of defense letter concerned. The petitioner had opted for the latter option i.e. of lump sum amount at the time of retirement in 1982. The Government sanction in his case specifically stipulated that the petitioner will be eligible for his pension based on qualifying service in the Army and that his family will be eligible for family pension on his permanent absorption in NHPC.

Subsequently, after a delay of 3 years, the respondent No. 4, CDA (Pensions), issued another pension order No. M/1060/85 in March, 1985 by which an amount of Rs. 160/- per month was deducted from the pension. The same letter also took away the benefit of family pension from the petitioner. Thereafter, the petitioner was paid the 100 per cent commutation on the basis of the revised pension sanction by the CDA (Pensions).

The CDA (Pensions) had not given any prior intimation to the petitioner to effect these reduction made after a delay of 3 years nor was any Explanation given as to why the pension rules as application to the Armed Forces, forming part of the defense Services Regulations, and the specific provisions in the Government sanction, issued for the retirement were violated by the CDA (Pensions).

Since CDA (Pensions) continued to ignore the petitioner's representation for over a decade, finally the petitioner took up the matter with the Controller General of defense Accounts (CGDA) vide his letter dated 29th August, 1995. Thereafter, CDA (Pensions) after a delay of over 10 years, sent a letter stating that Rs. 160/- per month had been deducted from his monthly pension since the petitioner was absorbed in Public Sector Undertaking vide his letter No. G/M/44772 dated 28th September, 1995. The CGDA had not deemed it necessary to quote any Government authority for their action which was manifestly in violation of the specific provision in the matter in the Government sanction issued for his retirement from Army. Besides, this letter was totally silent with regard to deletion of entitlement of Family Pension.

The Petitioner then took up his grievance in the matter with the Controller General of defense Accounts, defense Secretary, Financial Advisor to the defense Minister, and even the President of India. These representations have largely been ignored except for a communication from the Deputy financial Advisor to the defense Minister vide his letter No. 1(2)/93/Pen dated 15th January, 1996. This letter merely stated that as per instructions available on the subject, the weightage factor is not applicable to officers on permanent absorption in Public Sector Undertakings. The petitioner further represented that he was not claiming

any weightage factor but was only claiming the pension as laid down for the brigadier on completion of the minimum 28 years qualifying service prescribed in the Pension Regulations in 1982, vide his letter dated 30th April, 1996. No reply has so far been received by the petitioner till date."

2. The respondents filed a counter-affidavit in which they claimed that the impugned order was based on Office Memorandums No. F.49/15(6)/73-PS dated 22nd August, 1995 of the Government of India, Ministry of defense (Department of defense Production) and No. 32(1)/77/D (Pension/Services) dated 10th April, 1978 of the Government of India/Bharat Sarkar, Ministry of defense/Raksha Mantralaya and, Therefore, the deduction was permissible. Learned counsel for the petitioner pointed out that the aforesaid Office Memorandums have been struck down by this High Court in B.R. Malhotra Vs. Union of India, where the court held that the Office Memorandum were contrary to the statutory rules and regulations, Therefore, had no force of law. On an enquiry being made by the court from the respondents whether the aforesaid judgment has been challenged, it was found that the same still holds the field in which view of the matter we are of the opinion that the respondents could not draw upon the Office Memorandums referred to above in order to reduce the pension of the petitioner. There is no other rule, regulation, office order or instruction that has been placed before us to justify reduction in the pension of the petitioner.

3. In the aforesaid view of the matter, we have no hesitation to hold that the action of the respondents reducing the pension of the petitioner by taking recourse to the aforesaid Office Memorandum, mentioned hereinabove, is bad. Consequently, the Rule is made absolute and the writ petition is allowed. The respondents are directed to pay to the petitioner all arrears of pension deducted on the basis of the aforesaid Office Memorandums within a period of eight weeks.