
(2008) 02 DEL CK 0147
In the Delhi High Court
Case No : LPA No. 75/ of 2002

Dayawati

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Citation : (2008) 11 ILR Delhi 51

Hon'ble Judges : Dr. M.K. Sharma, C.J;Reva Khetrapal, J

Bench : Division Bench

Advocate : Nem, for the Appellant; Jyoti Singh and Ankur Chibber, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—We have gone through the case records of this case. The learned Single Judge, whose order is under challenge in this appeal, decided the writ petition in the light of the decision of the Supreme Court in Union of India and Others Vs. Rakesh Kumar etc., . In the said judgment, the Supreme Court, after noticing the provisions of Rules 48, 48A and 49 of the Central Civil Services (Pension) Rules, 1972, in paragraph 16 has observed as follows:

On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is without any basis. Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules. Rule 13 provides that qualifying service by a government servant commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. This rule nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is specific provision that if a government servant retires before completing qualifying service of 10 years because of his attaining the age of compulsory retirement, he would not get pension but would get the amount of service gratuity calculated at

the rate of half months emoluments for every completed six monthly period of qualifying service. In these appeals, we are not required to consider other conditions prescribed for qualifying service as it is admitted that respondent-members of the BSF have completed more than 10 years of qualifying service. Further Clause 2(a) of Rule 49 specifically provides for grant of pension if a government servant retires after completing qualifying service of not less than 33 years. The amount of pension is to be calculated fifty per cent of average emoluments subject to maximum provided therein. Clause 2(b) upon which much reliance is placed indicates that in case of a government servant retiring in accordance with the provisions of the Rules before completing qualifying service of 33 years, but after completing qualifying service of ten years, the pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case, the amount of pension shall be less than Rs. 375/- per month. This would only mean that in case where government servant retires on superannuation i.e. the age of compulsory retirement as per service conditions or in accordance with the CCS (Pension) Rules, after completing 10 years of qualifying service, he would get pension which is to be calculated and quantified as provided under Clause (2) of Rule 49. This clause would cover cases of retirement under Rules 35 and 36 that is, voluntary retirement after 20 years of qualifying service, compulsory retirement after prescribed age and such other cases as provided under the Rules. However, this has nothing to do with the quitting of service after tendering resignation. It is also to be stated that Rule 26 of CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the government where service qualifies. Hence, on the basis of Rule 49 member of BSF who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefit. There is no other provision in the CCS (Pension) Rules giving such benefit to such government servants.

2. In the light of the aforesaid observations of the Supreme Court, the learned Single Judge held that the case in hand is fully covered by the aforesaid decision of the Supreme court.

3. On going through the records we also find that the Supreme Court in the aforesaid case of Rakesh Kumar (*supra*) has held that on the basis of Rule 49 of the CCS (Pension) Rules, 1972, a member of the BSF, who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefit. The husband of the appellant had about 13 years of service to his credit. A similar case of a Commandant of Indian Coast Guard having 13 years of service to his credit was subject matter of a writ petition being WP(C) No. 5651/2000 titled Comdt. Rajeev Ranjan (Retd.) v. Union of India and Ors. (disposed of on 12th October, 2004), before one of the Division Benches of this Court consisting of Dr.Mukundakam Sharma and Gita Mittal, JJ. By judgment dated 12th October,

2004, the said writ petition filed by the Coast Guard employee was dismissed relying on the aforesaid decision of the Supreme Court.

4. The appellant herein is the widow of the deceased Shri Ram Avtar Singh, who had only 13 years of service to his credit. Her husband was not entitled to pensionary benefit on completion of 13 years of service. Resignation of the husband of the appellant was accepted by the respondent - BSF effective from 1st September, 1996 by which date he did not complete 20 years of service. However, under a misconception of law, the respondent - BSF gave pension to the husband of the appellant and after his death to his wife, who is the present appellant. In view of the aforesaid law now laid down by the Supreme court, they have stopped making payment of further pension, but it is categorically stated before us by the counsel for the respondents that whatever amount has since been paid to the widow or to her husband by way of pension under misconception of law, would not be recovered by the respondents. Therefore, in our considered opinion, this appeal has no merit and is dismissed.