

(2000) 03 DEL CK 0069

In the Delhi High Court

Case No : Civil Writ Petition No. 6644 of 1999

D.C. Verma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-03-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 AD 880 : (2000) 85 DLT 230 : (2000) 53 DRJ 796

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Indrjeet Sharma, for the Appellant; Amit Bansal, for Respondent No. 1, Uday Gupta and Bhavna Kohli, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Petitioner is a retired employee of Registry of the Delhi High Court and joined the Registry on 15th November, 1987 as Jr. Translator. On 6th October, 1977 he was promoted as interpreter and was confirmed on this post w.e.f. 4th August, 1982. He retired as Interpreter on attaining the age of superannuation, w.e.f. 31st January, 1985. At the time of his retirement the post of interpreter carried the pay scale of Rs. 775-1200/-. The pension of the petitioner was accordingly fixed taking into consideration the pay which he was drawing at the time of his retirement. At that time there were three permanent posts of interpretator. Two were redesignated as Court Master w.e.f. 6th August, 1985 and the third post was also redesignated as Court Master w.e.f. 30th May, 1987. It may be mentioned that as per Item No. II of Schedule II to the Delhi High Court Staff (Seniority) Rules, 1971 post of interpreter was an equal status post with the post of Superintendent, Court Master, Private Secretary and Librarian. Rule 8(c) of Delhi High Court Establishment (Appointment and Conditions of Service) Rules, 1972 further provided that a person appointed to a post of one category could be transferred to a post of equal status to any other category. As on 31st January, 1985, when the petitioner stood retired from

service the post of Superintendent, Court Master, Private Secretary and Librarian also carried the pay scale of Rs. 775-1200/-.

2. Pay scale of Rs. 775-1200/- which the petitioner and other persons on comparable categories as mentioned above were enjoying was on the basis of the recommendations of IIIrd Central Pay Commission. The recommendations of IVth Central Pay Commission were accepted by the Central Government and were enforced w.e.f. 1st January, 1986 i.e. almost one year after the retirement of the petitioner. On implementation of the IVth Central Pay Commission recommendation pay scale of Rs. 775-1200/- was revised to Rs. 2000-3500/-. However in case of Superintendent, Court Masters, Private Secretary, Interpreter and Librarian revised pay scales given to these category of employees was Rs. 3000-4500/-. Thus the post of Interpreter and other persons holding post in comparable status as mentioned above started getting the revised pay w.e.f. 1st January, 1986 in the pay scale of Rs. 3000-4500/-. In the case of the petitioner, who was drawing pension at that time, his pension was fixed in the revised pay scale of Rs. 2000-3500/-. Thereafter this position continued till 1st January, 1996 when pay scale were again revised on the recommendations of Vth Central Pay Commission. The pay scale of Rs. 2000-3500/- was revised to Rs. 6500-10,500/- whereas the pay scale of Rs. 3000-4500/- was revised to Rs. 10,000-15,200/-. For the sake of convenience the position as existed right from IIIrd Central Pay Commission can be summarised as under :

3. All the equal status posts of Superintendent, Court Master, Private Secretary, Interpreter and Librarian carried the same scale of pay :

After of w.e.f. Pay Scale

- (a) III Pay Commission 1.1.1973 Rs. 775-1200
- (b) IV Pay Commission 1.1.1986 Rs. 3000-4500
- (c) V Pay Commission 1.1.1996 Rs. 10000-15200

Pension of the petitioner was fixed taking into account the following corresponding replacement scales

After report of w.e.f. Pay Scale

- (a) III Pay Commission 1.1.1973 Rs. 775-1200
- (b) IV Pay Commission 1.1.1986 Rs. 2000-3500
- (c) V Pay Commission 1.1.1996 Rs. 6500-10500

4. What has prompted the petitioner to file the present writ petition is Government of India's instructions issued by Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners' Welfare dated 17th December, 1998 relating to revision of pension/family pension on the recommendation of Vth Central Pay Commission. The operative portion of the said instructions, which is relevant for our purposes, reads as under:

"The President is now pleased to decide that w.e.f. 1.1.1986, pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced w.e.f. 1.1.1996 of the post last held by the pensioner. However, the existing provisions in the rules governing qualifying service and minimum pension shall continue to be operative. Similarly, w.e.f. 1.1.1996 family pension shall not be less than 30% of the minimum pay in the revised scale introduced w.e.f. 1.1.1996 of the post last held by the pensioner/deceased Government servant."

5. On the basis of aforesaid instructions, petitioner made representation dated 26th April, 1999 to the Hon"ble Acting Chief Justice, High Court of Delhi, New Delhi inter alias requesting that his pension be re-fixed @ Rs. 5,000/- per month with reference to pay scale of Rs. 10,000-15,200/- attached to the post of Court Master. His representation was forwarded by the Registrar of the High Court to Secretary, Government of India, Ministry of Law and Justice and Company Affairs vide Diary No. 18398 dated 27th August, 1999. The facts of the case of the petitioner were stated and history of the pay scale enjoyed by interpreter as well as Superintendent/Court Master/Private Secretary/Librarian was also traced out. Reference was made in this letter to the judgment of this Court in the writ petition filed by interpreter and Librarians by which they were also allowed the pay scales similar to the pay scales enjoyed by Superintendent/Court Master/Private Secretary. The last two paragraphs of the said letter being relevant are requited below:

"As already stated the post of interpreter was merged with that of Court Masters. Now, all the posts of Private Secretaries/Court Masters/Superintendents and Librarian are in the basic scale of Rs. 10000-15,200. Since the posts of interpreter were equal status and in the same pay scale as that of Private Secretaries etc. and the post of interpreter having been merged into the cadre Court Masters, it is in the fitness of things that the interpreters should also be deemed to have carried the pay scale of Rs. 10000-15,200.

Keeping in view the above facts and the Court decision quoted above, it may be clarified as to how the pension and family pension of Shri D.C. Verma may be revised in pursuance of the O.M. dated 17.12.1998, as the post of interpreter no longer exists on the Establishment of this Court and also in the absence of the pay scale for the said post."

6. The stand of the High Court, as per the aforesaid letter, is that the post of interpreter should also be deemed to have carried the pay scale of Rs. 10000-15,200/-. However, clarification was sought from the Ministry of Law, Justice and Company Affairs as to how the pension and family pension of the petitioner be revised.

7. The Ministry vide its letter dated 11th October, 1999 while rejecting the revision of pay scale observed as follows :

"As Shri D.C. Verma was last holding the post of interpreter in the pay scale of

Rs. 775-1200/- at the time of his retirement, his pension and family pension is to be revised/prefixed with reference to the replacement pay scale of interpreter i.e. Rs. 6500-10,5 00 w.e.f. 1.1.1996, in terms of the instructions contained in the Department of Pension & Pensioners" Welfare O.M. dated 17.12.1998 referred above."

8. As the petitioner was denied the revision of pay in the manner he had demanded, he has filed the present writ petition praying for quashing of letter dated 11th October, 1999 of the Ministry of Law, Justice and Company Affairs and for issuance of writ of mandamus directing the respondents to re-fix the pension taking into account the pay scale of Rs. 10000-15,200/-.

9. The main thrust of argument by Mr. Inderjeet Sharma, learned Counsel for the petitioner was that the post of interpreter was not abolished but was redesignated as Court Master. It was always treated as equivalent in status with that of Court Master. Once the pay scale of Rs. 775-1200/- was revised to Rs. 3000-4500/- and then to Rs. 10000-15,2000, in the case of Court Masters, pay of the petitioner should have been refixed in this pay scale rather than fixing the same in the pay scale of Rs. 2000-3500/- and then at Rs. 6500-10500/-. It was his submission that only the nomenclature has changed and the post was not abolished. According to him, although High Court had, in its letter dated 27th August, 1999 rightly recommended that the post of interpreter should also be deemed to have carried the pay scale of Rs. 10000-15200, a typographical error crept in the last para of the said letter wherein it was wrongly mentioned that "post of interpreter no longer exists" and Ministry of Law, Justice and Company Affairs, keeping in view this aspect that this post was not existing at all decided to give replacement pay scale of interpreter i.e. 6500-10500 of the pre-revised pay scale of Rs. 775-1200/- which the petitioner was enjoying on his retirement, totally ignoring the subsequent development after the implementation of the IVth Central Pay Commission.

10. It was also stressed that post of interpreter was equal in status as the post of Court Master/Private Secretary/Superintendent and Librarian and when the pay scale of all these posts was Rs. 775-1200/- at the time of retirement of the petitioner, the same revision in the pay scale which was accorded to Court Masters/ Private Secretary/Superintendent was deemed to have been given to the petitioner also and Therefore the petitioner was entitled to get his pension fixed in the pay scale of Rs. 10000-15200/-. Reference was also made to the Division Bench judgment of this Court dated 18th February, 1983 passed in Civil Writ Petition No. 2833 of 1981 entitled Khawaja Abdul Mutaquim and Anr. v. Union of India and Ors., in support of the submission that all these posts were in equal status and further that post of interpreters carry the same nature of responsibility and importance as that of Superintendence/Court Masters/Private Secretary and Librarian. He also submitted that in the matter of pension concept of delay and laches cannot be brought and it was recurring cause of action.

11. As against the aforesaid submission of the petitioner, Mr. Amit Bansal,

learned Counsel appearing on behalf of the respondent submitted that the petitioner had retired before the implementation of the IVth Central Pay Commission recommendation w.e.f. 1st January, 1986. At the time of his retirement his pay scale was Rs. 775-1200/- and Therefore petitioner's pay was rightly fixed in the said pay scale. Petitioner was entitled to the revision in pension after the implementation of Vth Central Pay Commission by giving him the replacement scale of Rs. 775-1200/-. Pay scale of Rs.775-1200/- was revised to Rs. 2000-3500/- w.e.f. 1st January, 1986 and thereafter this was fixed in the revised pay scale as per Vth Pay Commission report to Rs. 6500-10500/-. Accordingly, the pension of the petitioner was fixed as per this pay scale w.e.f. 1st January, 1996. If the post of interpreter was later redesignated as Court Master i.e. after the retirement of the petitioner, petitioner could not take any advantage of such a situation as, petitioner retired as interpreter and his status only as interpreter is to be seen Along with pay scale which he was enjoying at the time of his retirement, for the purpose of refixing the pension. He accordingly submitted that the view taken by the Ministry of Law, Justice and Company Affairs in its letter dated 1st October, 1999 was the correct view.

12. The aforesaid narration of facts and the pleadings in this case would clearly demonstrate that the following aspects are not in dispute :

1. The post of interpreter has been equated with that of Court Master/ Superintendent/Private Secretary/Librarian.

2. As on 31st January, 1985 post of interpreter as well as that of Court Masters/ Superintendent were all in the same pay scale, namely Rs. 775-1200/-.

3. This Court in the case of Khawaja Abdul Mutaquim (supra) has in detail traced out the history of creation of permanent post of interpreter and how they were in equal in status with the post of Court Master/ Superintendent/Private Secretary/ Librarian. In fact after the IIIrd Central Pay Commission interpreters and Librarians were given the pay scale of Rs. 550-900/- and by the above judgment they were entitled to be placed in the same scale of Rs. 775-1200/-. The following observations may be worth quoting :

"It will be seen that the pay scales of Private Secretaries, Court Masters and Superintendents and that of the interpreters and the Librarian was the same initially. The same pay scale of Rs. 550-900 was also granted by the Delhi Administration in pursuance of Pay Commission's recommendations. The Chief Justice sought for the same revised pay scales for all these five categories, as is clear from the communication of High Court dated July 24, 1978. Now under Delhi High Court Staff (Seniority) Rules, 1971, Item (ii) of Schedule II, describes the posts of Private Secretaries/Court Masters/Superintendents/ Librarian/ interpreters as equal status posts. Vide Rule 8(c) of the Delhi High Court Establishment Appointment and Conditions of Service Rules, 1972 the person appointed to a post in one category may be transferred to the post of equal status in any other category.

Now the posts of interpreters carry the same nature of responsibility and importance as that of the Superintendents and Court Masters. All of these five categories have a common seniority list."

4. The post of interpreters were not abolished but were designated as Court Master. Thus on 6th August, 1985 when two posts of interpreter were re-designated as Court Master and on 30th May, 1987 when the remaining third post was redesignated as Court Master, the incumbent holding the post of interpreter as on that date came to be known as Court Master thereafter. Naturally these interpreters, redesignated as Court Master, were given pay scale of Rs. 3000-4500/- w.e.f. 1st January, 1986 instead of Rs. 2000-3500/-. This pay scale was given with the intervention of the Court to the Court Master/Private Secretary/ Superintendent. However, as it was not allowed to Librarians they filed CM 4197 of 1993 in Civil Writ Petition No. 2765 of 1991 which was allowed by this Court granting Librarians also the pay scale of Rs. 3000-4500/-.

13. In view of the aforesaid admitted position it cannot be said that merely because the petitioner retired in the pay scale of Rs. 775-1200/-, his pension could have been revised w.e.f. 1st January, 1986 in the pay scale of Rs. 2000-3500/- as this was the revised scale of Rs. 775-1200/-. Admittedly the post of interpreter is equal in status as that of Court Master and admittedly post of interpreter was redesignated as that of Court Master. In fact two posts were redesignated as Court Master on 6th August, 1985 i.e. even before implementation of IVth Central Pay Commission w.e.f. 1st January, 1986. Therefore these two interpreters who were having the pay scale of Rs. 775-1200/- were given the pay scale of Rs. 3000-4500/- on 1st January, 1986. The position in respect of the third interpreter, whose designation remained as Interpreter as on 1st January, 1986 and was redesignated as Court Master only w.e.f. 30th May, 1987, really clinches the issue. As on 1st January, 1986 he was given the revised pay scale of Rs. 3000-4500/- even as interpreter. Thus even in the absence of res-designation the interpreter would have drawn pay in the pay scale of Rs. 3000-4500/- as the post of interpreter and Court Master/ Superintendent/Private Secretary were treated alike. On what basis then it can be said that the replacement scale of interpreter pre-revised scale of Rs. 775-1200/- is Rs. 2000-3500/- after the implementation of the IVth Pay Commission? The position taken in the letter dated 27th August, 1999 sent by Registrar of this Court to the Secretary, Government of India, Ministry of Law, Justice and Company Affairs that interpreter should also be deemed to have carried the same pay scale of Rs. 10000-15200/- Therefore appears to be correct. In the impugned letter dated 11th October, 1999 sent by the Government of India it is stated that the replacement scale is Rs. 6500-10500/- merely because the petitioner retired as interpreter in the pay scale of Rs. 775-1200 /-. It has not taken into consideration that so far as the post of interpreter or its equivalent post i.e. Court Master/Private Secretary/ Superintendent/Librarian are concerned the replacement scale is Rs. 3000-4500/- w.e.f. 1st January, 1986 and Rs. 10000-15200/- w.e.f. 1st January,

1996. Therefore it cannot be said that replacement pay scale of interpreter was Rs. 6500-10500/-. This position taken by the Ministry in the impugned letter is clearly erroneous and is accordingly set aside.

14. The petitioner has claimed the benefit only w.e.f. 1st January, 1996, on the basis of instructions dated 17th December, 1998 issued by Government of India for which this petition was filed in November, 1999 and that two after the rejection of his request by the Government vide order dated 11th October, 1999. Therefore this present petition is not belated. Even otherwise, right to receive pension is recurring cause of action.

15. It would be deemed that replacement scale of the petitioner is Rs. 10000-15200/- and his pension would be refixed taking into account this pay scale instead of Rs.6500-10500/-.

16. The prayer contained in the petition is accordingly allowed. Direction is issued to the respondent to refix the pension of the petitioner taking into account the pay scale of Rs. 10000-15200/-w.e.f. 1st January, 1996 and he may be paid the arrears of pension accordingly. This exercise be completed within a period of two months from today.

The petitioner shall be entitled to receive cost quantified at Rs. 5,000/-.