
(2003) 05 DEL CK 0129
In the Delhi High Court
Case No : CW No. 2567 of 2003

D.D. Swami

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-05-2003

Acts Referred:

Citation : (2004) 112 DLT 911 : (2005) 3 SLJ 269

Hon'ble Judges : Madan B. Lokur, J; D.K. Jain, J

Bench : Division Bench

Advocate : Anil Gautam, for the Appellant; Raju Ramchandran, ASG, Aman Lekhi, for Deptt. of Expenditure and Rekha Palli, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, J.—By means of this writ petition, the petitioner seeks a direction to the respondents to pay him full pension with effect from the date he retired from service as Commandant in the Border Security Force.

2. The petitioner retired at the age of 55 years after rendering a service of more than 30 years but before completion of 33 years. He was granted pension on pro rata basis. The petitioner made a representation to the respondents praying for grant of full pension and other retiral benefits on the plea that since the age of superannuation up to the rank of Commandant in para-military forces was 55 years, i.e., three years less than officers of the higher rank in the same force and other Central Government employees, who normally retire at the age of 58 years, the requirement of qualifying period of service for being entitled to full pension in his case should be taken as 30 years and not 33 years as in the case of other Central Government employees, etc. In nutshell, the plea was that the petitioner having superannuated at the age of 55 years, he should be given the benefit of full pension on completion of 30 years of service.

3. Having failed to get any response from the respondents on the said representation, the petitioner has preferred the present writ petition.

4. Notwithstanding the fact that the issue raised by the petitioner is no more *res integra* in so far as this Court is concerned and the writ petition could have been allowed at the threshold even without notice to the respondents, but, in order to elicit the stand of the respondents as to why they were ignoring with impunity the directions given by this Court in various decisions to the effect that in view of the decision of the Apex Court in *Raghunandan Lal Chaudhary & Ors. v. Union of India*, AIR 1998 SC 2125, all similarly situated persons should be granted relief by the respondents themselves and the pensioners concerned should not be forced to come to the Court, we thought it expedient to direct the Department of Expenditure, Ministry of Finance, Government of India to file an affidavit. This direction had to be given because it was stated before us that the said Department was objecting to the release of full pension despite recommendations by the parent Departments concerned. In response thereto, an affidavit in a similar matter (being CWP No. 3202/2003) has been filed by one Manoj Joshi, Officer on Special Duty, Department of Expenditure stating that the issue has been examined by the Government by holding inter-ministerial discussions. It was found that the directions given by this Court regarding payment of full pensionary benefits on completion of 30 years of qualifying service could not be accepted because: (i) the benefit of full pension to the Government employees was given only on completion of 33 years of qualifying service; (ii) changing the prescribed qualifying service of 33 years for grant of full pension will have serious financial repercussions exceeding Rs. 1193 crore per annum for Armed Forces personnel and; (iii) none of the Pay Commissions have recommended a change in the years of qualifying service prescribed for full pension even though a change in the age of superannuation had been recommended by some of these Commissions. It is also averred that the Union of India is moving the Hon'ble Supreme Court for transfer of all cases pending before different High Courts on the issue.

5. We are not only surprised but are dismayed at the the afore-noted stand of the Department of Expenditure at this juncture. Some of the decisions of this Court relate back to the years 1995, 1998 and 1999 but the respondents never thought of challenging the same before the Supreme Court. Moreover, these decisions were based on the view expressed by the Apex Court in the year 1988 in *Raghunandan Lal Chaudhary's* case (*supra*). In that case their Lordships of the Supreme Court had come to the conclusion that if an employee retires at the age of 55 years, the qualifying service for receipt of full pension would be 30 years. Though more than two dozen cases on the issue have already been decided by this Court but we do not propose to burden this order by citing all these decisions. However, for the sake of ready reference, we may refer to the decisions in *Shri M.K. Khar v. Union of India & Ors.* (CWP No. 1696/2000), *L.S. Bisht Ex-Commandant Vs. Union of India and Others*, and *Om Pal Singh Ex-Commandant (ITBP) Vs. Union of India and Others*, Admittedly, all the decisions rendered by this Court so far have attained finality and relief in terms thereof has also been granted to the persons concerned. Thus, there is no reason why the

same benefit, which has already been granted to other similarly situated persons, should be denied to the petitioner before us.

6. Following the view taken in the said decisions, with which we are in respectful agreement, we allow the writ petition and direct the respondents to re-fix the pension of the petitioner, taking his qualifying service for full pension at 30 years and above. We further direct that the arrears of unpaid pension, computed as above, shall be paid to the petitioner within three months from today, failing which the petitioner would be entitled to interest at the rate of 9% per annum on the amount due and payable as above, from the date of his entitlement till the actual payment. The petitioner shall be entitled to costs, quantified as Rs. 5000/-.

7. The petition stands disposed of.