

(2008) 07 DEL CK 0093

In the Delhi High Court

Case No : WP (C) No. 1001 of 2008 and CM No. 1957 of 2008

Deen Bandhu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21, 29(2)

Citation : (2009) 1 ILR Delhi 546

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Aeltemesh Rein and Aldanish Rein, for the Appellant; Geetanjali Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—The petitioner has challenged the judgment dated 30.11.2007 of Central Administrative Tribunal, Principal Bench, Delhi, by which his O.A. seeking relief of pension, DCRG, leave encashment etc. was dismissed as not maintainable since the relief claimed by the petitioner had already been adjudicated by the Chandigarh Bench of Tribunal.

2. The case of petitioner is that he was appointed with the respondent on 7.7.1951 as a Loco-Driver. He was lastly posted at Bhatinda from where he retired on 31.10.1985. He claims to be a pension optee but was never paid his pension. During his posting at Bhatinda there was some dispute about the railway quarter allotted to him and his transfer to Ghaziabad. Petitioner filed a civil suit at Bhatinda in the year 1982 challenging his transfer, seeking permanent injunction restraining respondents from charging penal rent from him and for the grant of arrears of pay, bonus, increment, etc. During the pendency of suit, he retired on the date as is mentioned above. On 22.12.85, the said suit was decreed in his favor.

3. Against the judgment and decree of civil court, respondent filed an appeal

which was transferred to Central Administrative Tribunal, Chandigarh u/s 29(2) of the Administrative Tribunal Act. The said appeal was disposed of by the Tribunal with consent of parties vide order dated 31.07.86. Thereafter, petitioner filed an execution application for execution of decree. Objections were filed by respondents which were allowed by the execution court. Petitioner challenged the same by filing revision petition in Punjab and Haryana High Court which was disposed of by Lok Adalat vide order dated 8.10.99 and directions were issued to execution court to finally decide execution application within 6 months. The execution court vide its order dated 13.6.2000 rejected the claim of the petitioner for arrears of pension from 1.4.86 to 31.12.99 on the ground that there was no dispute of pension before civil court and the suit was filed much before his super annuation. It was also held that petitioner was not a pension optee.

4. The petitioner made representations to respondent for the grant of pension. Finding no response from respondent, petitioner filed O.A. No. 110 P.B/2005 before CAT, Chandigarh Bench against respondent for release of arrears of pension. The said O.A. was dismissed vide order dated 10.03.2005. Thereafter, as per him he managed to get a photocopy of certified copy of petitioner's "Service Book for Pensionable Staff" and on its strength made representation to respondents but no reply was received. Ultimately he filed OA No. 618/2007 before CAT, Principal Bench, New Delhi which was rejected vide impugned order dated 30.11.2007. Aggrieved with the same, present petition is filed.

5. It is contended by petitioner that the service book was always in the custody of respondent and non-production thereof by respondent is a fraud for the purpose of obtaining judgment against petitioner. It is also contended that the OA before the Tribunal at Delhi was based on a fresh cause of action as the petitioner had obtained a copy of "service book" after the disposal of O.A. before Chandigarh Bench of the Tribunal as such Tribunal was not justified in dismissing the O.A.

6. On the other hand, stand of the respondent throughout has been that petitioner during his service did not exercise his option for pension on the introduction of pension scheme. It is stated that petitioner had opted for Scheme of Service Contribution to Provident Fund (S.C. to P.F.) and was not entitled to any pensionary benefits. It is stated that petitioner has been paid Rs. 22,005/- as PF including CPF benefit as the non optee under SRPF rule No. AV No. 114 PIG dated 22.10.85 and CO7 No. 170033 dated 14.11.1985. It is further stated that the time limit for preservation of old record, that is, service book/leave account and personal file is 15 years.

7. We have considered the submissions made and perused the record.

8. Undisputed facts are that petitioner retired in 1985. He applied for pension from 1.4.1986 to 31.12.1999 in execution application No. 3 of 19th January, 2000. The application rejected by the execution court at Bhatinda vide order

dated 13.6.2000 on the ground that he was not entitled to the said amount as the question of pension was not the subject matter of decree under execution and also that petitioner was not a pension optee. Thereafter, he had approached the Chandigarh Bench of Tribunal by filing OA. 110-PB/2005 which was dismissed on 10th March, 2005. Perusal of the said order shows that the Tribunal granted leave to petitioner to lead evidence to the effect that he was an optee for pensionary scheme. However, he was unable to produce any evidence in this regard. The Chandigarh Bench of Tribunal after hearing the parties at length dismissed the OA with the following observation :

We find from the file of this case, as well as the pleadings and oral submissions made, that applicant has failed to show that he had ever opted for the pension scheme or that he had opted for such a scheme in a particular year even if he could not specify the date or month of such exercise of option. On the negative side, we find that after his retirement in 1985, he received the amounts available under the Provident Fund scheme and had agitated before various courts only deduction of penal rent from the amounts of Provident Fund without ever making an attempt to lay a claim for pensionary benefits. We cannot express any opinion about the authenticity of Annexure A-1 where some papers, purported to have been signed by the applicant in the year 1993, for laying his claim for pensionary benefits are said to be by the petitioner. Thereafter, he remained silent for 9 years without filing a case for grant of pensionary benefits. A kind hearted direction, given by a Bench of this Tribunal, to consider his representation and to dispose it of, in our opinion, was a well intended order, not mean to either increase or give a fresh lease of limitation to the applicant. Even if one were to take a sympathetic view that pensionary claims should not be thrown out merely because a litigant comes to the court a little later but one cannot ignore the provisions of the Limitation Act as well as the period of limitation provided u/s 21 of the Administrative Tribunals Act, 1985 in such case when the relevant record of a particular claimant must possibly have been destroyed because of a big lapse of time.

9. The Chandigarh Bench dismissed the OA by holding that an attempt is being made by applicant to lay his claim for pensionary benefits as prima facie it is clear that he never opted for pension schemes w.e.f. the year of its introduction in 1957 up to date of retirement in 1985. The petitioner did not challenge the order of Tribunal at Chandigarh and it became final.

10. Thereafter, petitioner filed the instant OA before Principal Bench of Tribunal at Delhi by contending that on getting photocopy of the certified copy of his "Service Book for pensionable staff" he filed fresh petition which has given fresh cause of action. On this the finding of the tribunal is as under:

Much reliance was placed by the counsel for applicant on Annexure P/1 at page 19 and he had strenuously argued that at the time, when Chandigarh Bench decided his earlier OA, this Annexure P/1 was not available with the applicant. However, on minute perusal of Annexure P/1 it is seen that the certified copy of

the said Annexure was issued by the Lower Court on 21.1.2000. That means on the day when applicant had approached the Chandigarh Bench of the Tribunal in 2005, this document was very much available with the applicant. Therefore, applicant cannot be allowed to say that this is something new which has come in his possession, after his earlier OA was decided by the Chandigarh Bench. Nor can it give him any right to file yet another OA before the Principal bench of Tribunal because even if his contention is taken to be true, for the sake of argument, that he got hold of Annexure P/1 subsequently i.e. after his OA was decided in the Chandigarh Bench, at best he could have filed RA before the same Bench. Under no circumstances, can applicant be allowed to file yet another OA before a different Bench for claiming the same relief which he had already claimed before the Chandigarh Bench of the Tribunal.

11. The case of the petitioner, as already pointed above, has already been decided by the Tribunal at Chandigarh on 10th March, 2005, which has not been challenged by him in any forum and the said order has attained finality.

12. The contention of petitioner that photocopy of certified copy of petitioner's "Service Book for Pensionable Staff" was not available when he filed petition before CAT has not been believed by Tribunal. Even assuming it was not with him, nothing prevented from summoning the record before Tribunal at Chandigarh when as per him it was available in the records of Civil Court. There is nothing on record to show that any such efforts were made by him. Contention raised in this regard has no force.

13. In view of the above discussion we find that the Tribunal has rightly held that the petitioner cannot re-agitate the issue by filing a fresh petition.

14. The impugned order shows that petitioner has been sanctioned ex gratia pension @Rs.600/- per month w.e.f. 1.11.1997 vide PPO No. D/DLI/PEN016020579 dated 7/2006 on application filed by the petitioner.

15. We find no infirmity in the impugned judgment which calls for interference of this Court in the exercise of its writ jurisdiction. Accordingly the petition stands dismissed.