

(2013) 02 DEL CK 0290
In the Delhi High Court
Case No : LPA 413 of 2012

Dhanpati Ram

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Delhi High Court Act, 1966 — Section 10

Citation : (2013) 02 DEL CK 0290

Hon'ble Judges : D. Murugesan, C.J.;V.K. Jain, J

Bench : Division Bench

Advocate : Rajeeve Mehra, ASG and Mr. Ravinder Aggarwal, CGSC, Mr. Aditya Malhotra, (Union of India), Mr. D.S. Chauhan and Mr. Rajinder Juneja and Mr. Siddharth Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant was employed with respondent No. 2 Rural Electrification Corporation (REC) and retired from its service on 31.01.2004. On 19.07.2006 a meeting was held under the Chairmanship of Secretary (Power), Government of India. The discussions held in the said meeting were recorded by way of a Summary and to the extent it is relevant, the said Summary reads as under:-

Js (RE) briefed Secretary (P) that REC had given a presentation on the revision of pay scales of Below Board Level Executives on 9.5.2006 wherein Secretary (P) had advised REC to explore the possibility of revision of pay scales similar to the case of NHPC. REC had replied that there were constraints in adopting pay scales adopted by NHPC as -

(1) The pay scales of NE-5 and NE-6 (for non-executive) were much higher than the pay scales adopted by NHPC for its Executives (E1 and E2 scales). In REC, E1 & E2 scales, revised in line with PFC.

(2) REC needs to be compared with PFC.

(3) The revised pay scales have been given since 1997 and any change may lead to complications relating to industrial relations.

Secretary (P) observed that the scales which have been recently revised for NHPC could be adopted for REC as the scales from E-2A level (Rs. 10750-16750) onwards was comparable to that of scale of REC (present E1 Grade of REC was Rs. 10750-16750). REC was advised to make a revised proposal on the revision of pay scales of REC taking analogy of pay scales as recently approved for NHPC (pay scales attached). The pay of serving employees and retired employees could be fixed in the scale of Rs. 10750-16750 by terming it as E-2A and accordingly in the other scales upwards. A REC had been agitating for long for release of FDRs" released by taking approval to Hon"ble Minister of Power so as to settle the grievances of the retired employees. Further, REC may submit a revised proposal for revision of pay scales on the lines similar to that of NHPC with provision of two entry grades for future recruitment E1 (Rs. 8000-13400) and E2 (Rs. 8600-14600).

WP(C) No. 8252/2007 was filed by the appellant, seeking a direction for implementation of the "decision" taken in the meeting dated 19.07.2006, regarding revision of the pay scales of respondent No. 2. The aforesaid writ petition was disposed of with a direction to Union of India to finalize the revised pay scales of the employees of REC, preferably within six months from the date of the receipt of the said order. Vide order dated 22.07.2010, the respondent No. 2 REC decided to provisionally adopt DPE pay scales with effect from 01.01.1997 and implement the revised pay scales with effect from 01.01.1997, as approved by its Board of Directors in the meeting held on 20.04.2009. This was a provisional decision pending approval of IDA pay scales of Board level and Below Board level Executives with effect from 01.09.1997 at par with Power Finance Corporation. It was further directed in the aforesaid Office Order dated 22.07.2010 that the pay of the Executives on the rolls of respondent No. 2 REC on 31.12.2006 shall be reworked in the provisional pay scale.

2. Being aggrieved from the aforesaid Office Order dated 22.07.2010, the appellant filed WP(C) No. 2461/2011, impugning the Office Order dated 22.07.2010 inter alia on the ground that it was inconsistent with the "decision" dated 19.07.2006. The appellant also contended that the respondents could not have changed the aforesaid "decision" to his detriment. The aforesaid writ petition was dismissed by the learned Single Judge vide order dated 20.04.2011. Being aggrieved from the said order, the appellant filed LPA No. 893/2011. A Division Bench of this Court permitted the appellant to withdraw the appeal, with liberty to file a Review Petition before the learned Single Judge. The Review Petition having been dismissed vide order dated 27.01.2012, the appellant is before us by way of this appeal.

3. The question which arises for our consideration in this case is as to whether any decision for revision of the pay scales of the employees of the respondent No. 2 REC was taken in the meeting held on 19.07.2006 and if so whether such

decision could be later varied by way of Office Order dated 22.07.2010. We would like to point out that the essential difference between the "Summary/Decision" dated 19.07.2006 and the Office Order dated 22.07.2010 is that whereas the Summary/Decision dated 19.07.2006 referred to revision of the pay scales of the employees of respondent No. 2 at par with the pay scales of the employees of NHPC, the Office Order dated 22.07.2010 places the employees of respondent No. 2 at par with those of Power Finance Corporation.

4. A bare perusal of the Summary dated 19.07.2006 would show that this document is nothing, but a record of discussions which took place in the meeting held on that day, under the Chairmanship of Secretary (Power) with respect to revision of the pay scales of Executives below board level with effect from 01.01.1997. In our considered view, the aforesaid Summary cannot be said to be a decision to revise the pay scales of the employees of REC at par with those of the employees of NHPC. It is evident from the said Summary that in an earlier meeting held on 09.05.2006, Secretary (Power) had asked REC to explore the possibility of revision of the pay scales of its employees at par with the pay scales of the employees of NHPC and on such examination, REC had expressed its constraints in adopting pay scales of NHPC for its employees. Those constraints were recorded in the Summary of discussions. It was also pointed out by REC that its Board of Directors had approved the pay scales of its below board level Executives on Power Finance Corporation pattern, with effect from 01.01.1997, so as to avoid anomalies between pay scales of Executives and non-Executives, subject to approval of Government of India, Ministry of Power. Thereupon, the Secretary (Power) observed that the recently revised pay scales of NHPC could be adopted by REC and accordingly, he advised REC to submit a revised proposal on the revision of the pay scale of its employees, taking analogy of pay scales recently approved by NHPC. By no stretch, this Summary, in our view, can be said to be a "decision" either of REC or of Government of India to revise the pay scales of the employees of REC at par with those of the employees of NHPC. What Secretary (Power) desired in the said meeting was that a proposal for revision of the pay scales of the employees of NHPC may be submitted to the Government. Asking for such a proposal, in our opinion, cannot be said to be a decision to adopt the pay scales of the employees of NHPC for the employees of REC. The proposal, when made in terms of such Minutes/Summary, will have to be considered on file, and appropriate decision taken by the Competent Authority. Another important aspect in this regard is that a decision, which could be enforced, is required to be taken by the authority which is competent to take such a decision. There is no material before us to show that Secretary (Power) was the authority, competent to revise the pay scales of the employees of REC, so as to bring them at par with the pay scales of the employees of NHPC. Therefore, neither any decision was taken in the meeting dated 19.07.2006 to revise the pay scales of the employees of REC, so as to bring them at par with those of the employees of NHPC nor has it been shown to us that Secretary (Power) was competent to take such a decision.

5. Even if we presume that a decision was taken in the meeting held on 19.07.2006 to revise the pay scales of employees of REC, so as to bring them at par with those of the employees of NHPC and the Secretary (Power) was competent to take such a decision, that would be of no avail to the appellant since it is well settled legal proposition that a decision, before it becomes capable of enforcement through the process of the Court, needs to be duly communicated to those, who are concerned with such decision. Admittedly, no office order or notification was issued either by respondent No. 1 or by respondent No. 2, revising the pay scales of the employees of REC so as to bring them at par with those of the employees of NHPC. In the absence of any such notification or office order, the appellant has no legal right to seek enforcement of the alleged "Decision" dated 19.07.2006.

6. In *Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others*, Supreme Court observed as under:

It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

In *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, , the following view was taken by the Supreme Court with respect to respect to notings/opinions recorded by the Government Officers/Ministers on the file:

A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government, unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.

The discussions held in a meeting and the views expressed there certainly do not stand on the footing higher than the notings in the file. Therefore, it would be difficult to dispute that such deliberations unless they result in final decision

taken by the authority competent to take such a decision and the decision so taken is communicated to the concerned persons are not capable of being enforced by way of a writ petition.

7. During the course of arguments, the learned counsel for the appellant submitted that the Office Order dated 22.07.2010 is arbitrary and discriminatory since it excludes the employees, who had retired prior to 01.01.2007, from the benefit of retrospective revision of the pay scales. A perusal of the order dated 20.04.2011 passed by the learned Single Judge would show that no such plea was raised before him. The appellant filed an appeal against the order dated 20.04.2011 and sought leave to file a Review Petition on the ground that Annexure P-6 to P-9 to the Writ Petition had not been considered. No liberty was taken by the appellant to file Review Petition also on the ground that the Office Order dated 22.07.2010 was discriminatory and arbitrary on account of its denying the benefit of retrospective revision of pay scales to those employees who had retired prior to 01.01.1997. The order passed by the learned Single Judge in the Review Petition dated 27.01.2012 would show that no such plea was taken even at the time of the hearing of the Review Petition. It is settled legal proposition that the Court is required to examine only those contentions which are raised before it. The Court is under no obligation to consider the submissions which are made in the petition, but are not pressed during the course of arguments. There is no material before us to indicate that the plea of the Office Order 22.07.2010 being arbitrary and discriminatory was raised before the learned Single Judge either at the time of hearing of the Writ Petition or at the time of hearing of the Review Petition. In case, if such a contention was raised, but was not considered by the learned Single Judge, the appropriate remedy for the appellant was to approach the learned Single Judge with a plea that the contention, though raised by him, had not been examined. In the absence of such a course having been adopted, we cannot allow the contention to be raised for the first time in the appeal.

8. This appeal is liable to be dismissed for yet another reason. As noted earlier by us, the order passed by the learned Single Judge on 20.04.2012 was challenged by the appellant by way of LPA No. 893/2011. The said LPA was withdrawn by the appellant with liberty to file a Review Petition before the learned Single Judge. No liberty was taken by the appellant from the Division Bench to file a fresh appeal in the event of review application, which he was proposing to file before the learned Single Judge, being dismissed. In our view, where the appellant withdraws an appeal without liberty to file a fresh appeal, the second appeal, challenging the very same order would not be maintainable. We also hold that since an order rejecting a review application is not a "judgment", within the meaning of Clause 10 of Letters Patent or Section 10 of Delhi High Court Act, no appeal against such an order is maintainable. Therefore, the appeal is liable to be dismissed on this ground as well. For the reasons stated hereinabove, we find no merit in the appeal and the same is hereby dismissed. There shall be no order as to costs.