
(2001) 05 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 4346 of 2001

Dhruva Kumar Srivastava

APPELLANT

Vs

Chairman, B.S.E.B.

RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Bihar Pension Rules, 1950 — Rule 106, 250

Bihar State Electricity Board Service Regulations, 1976 — Regulation 73, 75

Citation : (2001) 3 BLJR 1638 : (2001) 3 PLJR 357

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner is aggrieved on account of delay of almost 11 years in finalising his application for commutation of pension vide letter No. 1249 dated 30-8-1999 and consequently denial of second commutation of pension after 10 years due in the year 1999 itself, besides denial of condonation of shortage of 3 months 19 days for qualifying 20 years of service which would have raised the service period to 25 years.

2. In short, the case of the petitioner is that while he was in service of the Board as Executive Engineer and was not being given any job he opted for voluntary retirement in the year 1988 and after four months, he was sanctioned pension vide PPO No. 572 dated 17-11 -1988. He applied for commutation of his pension but was finally allowed vide letter No. 1249 dated 30th August, 1999 by the Respondent-Board without any interest and on the basis of shorter period of service rendered by him, which has further denied him of second commutation of pension after 10 years due in the year 1999. It is also his case that out of the sanctioned amount of Rs. 63,334.80 as commuted value of pension, he was paid only a sum of Rs. 58,400 vide letter No. 4075 dated 30th August, 1999. It appears that the petitioner had earlier also filed CWJC No. 3661 of 1989 which was disposed of by this Court on 18-9-1989 for payment of his load despatch

shift duty allowance which had been given to all of his colleagues for performing the duties in Load Despatch and also for sanction of commutation of pension. According to him, this Court directed the respondent to pay the load despatch shift duty allowances to him and also for sanction of commutation of his pension within a period of three months. In compliance of the said order, he was paid load despatch allowance, but commutation of pension was delayed for over 10 years. It is alleged that due to the apathy of the Respondent-Board, the petitioner has been deprived of his admitted dues under statutory provision for quite long time which forced him to file the present writ petition.

3. Initially, according to the case of the respondents in the counter-affidavit, petitioner opted for voluntary retirement in the year 1988 and after opting voluntary retirement, he applied for commutation of 1/3rd pension. The Board vide its letter dated 21-7-1989 intimated him to appear before the Medical Board along with his application for pension in forms 7 and 9 in the light of the provisions contained in Rule 250 of the Bihar Pension Rules and also sent several reminders, but he did not respond. He vide his letter dated 10-6-1991, contained in Annexure A requested the Chairman to condone the shortage of 4 months in 20 years length of service and further that he did not want communication of pension, but full and final pension to be paid to him regularly. He, however, again changed his mind and requested the Board vide letter dated 24-9-1992 for grant of commutation of pension in response to which the Board gave several reminders and requested him for compliance of the aforementioned requirements. He finally submitted his application in pension form 7 on 31-7-1995 and the Board vide its office order No. 4393 dated 14-8-1995 constituted Medical Board and requested him to appear, but he never appeared. According to the Board since he did not appear and his claim also involved condonation of shortage of service for more than 3 months, the matter was placed before the Board and the Board took lenient view on humanitarian ground and allowed him commutation of pension as a very special case in the meeting dated 10th and 11th September, 1998 and also noted that it may not be taken as a precedence. It is admitted that under Finance Department Memo No. 3/AF/02/88-6287 dated 19-9-1988 adopted vide Board's resolution No. 1059 dated 27-11-1989, three months' condonation is available which is also provided in Rule 106 of the Bihar Pension Rules for condonation of deficiency of three months in qualifying service beyond which the sanction of the Provincial Government is required. With respect to the deducted amount, it is stated that the same is on account of the amount received by the petitioner in between the date of commutation of pension and actual date of commutation of pension. It is stated the reference of case of Sri G.N. Rai Yadav, Chief Engineer is not relevant as he had retired from service of the Board on superannuation, whereas the petitioner had opted for voluntary retirement.

4. A supplementary counter-affidavit has been filed on behalf of the Respondent-Board, wherein it is stated that the petitioner has incorrectly based his claim on the basis of voluntary retirement and it appears that the position was not

clarified by the Board in its earlier affidavit. According to the stand taken in the supplementary counter-affidavit, the petitioner applied to the Secretary of the Board for voluntary retirement or resignation with pension on 6-10-1987 on account of various problems of his family, and he continued to press for acceptance of the same and thus the Board accepted his resignation vide office order No. 3036 dated 25-5-1988. Their further case is that the Board adopted Bihar Pension Rules, 1950 and the amendments made therein from time to time, and Rule 101 of the said Rules provides that resignation entails forfeiture of past service. As such, according to the Bihar Pension Rules, pension was not payable to the petitioner. Further, according to the Respondent-Board, Regulation 75 of the Bihar State Electricity Board Service Regulations, 1976 provides for terminal benefits, namely, proportionate pension and accordingly his pension was fixed vide PPO No. 572 dated 17-11-1988. It is contended that under the said Regulation, there is no provision for commutation of pension and for the same a provision has to be found out in Bihar Pension Rules. It is further stated that the State Government vide Finance Department Memo No. 4019 dated 14-3-1978 decided to simplify the procedure and provided that a Government servant who applied for commutation within one year of retirement on superannuation would not be subjected to medical examination. However, paragraph 2 of the said decision provided that the same shall not apply to a person retiring other than superannuation. As such, according to the Board, in any view of the matter even if it is held that the petitioner was entitled to commutation of pension, the aforesaid requirement had to be complied.

5. The petitioner, who has appeared in person, has submitted that the action of the Board against him has been discriminatory and mala fide so much so that even while entertaining his request for voluntary retirement or resignation the Board though took almost 7 months to pass order but for reasons best known to the authority concerned accepted his resignation instead of voluntary retirement and that too did not even wait for 19 days only to deny the benefit of deficiency in qualifying service available as per Finance Department Memo No. 3/AF/02/88-6287 dated 19-9-1998 adopted by the Board vide Board's resolution No. 1059 dated 27-11-1989. It is contended that in similar circumstances, the Board allowed condonation of even longer period, but in the case of the petitioner, the same has been arbitrarily denied. Moreover, in the matter of disposal of his application for commutation of pension, though filed soon after he was relieved the Board has taken almost 11 years on the plea that he did not apply in proper form and that he did not appear before the Medical Board when admittedly under Government notification dated 14-3-1978, there was no requirement for appearance before the Medical Board if application is filed within one year. It is contended that he being disgusted with the apathetic attitude of the authorities of the Board was forced to submit his application dated 10-6-1991 (Annexure A) requesting the Board for condoning the shortage of four months of qualifying service and that he did not want commutation of pension, but full and final pension be paid regularly but the same was also not allowed. It

is also contended that there is no substance in the stand of the Board that pension was not payable to him as the Board did not accept his request for voluntary retirement and accepted his resignation vide Annexure B. It is submitted that under 1976 Regulation itself, a permanent employee or temporary employee are eligible for payment of proportionate pension, full amount of CPF, proportionate amount of gratuity, proportionate amount of any other terminal benefits admissible even in the case of resignation or leaving the service of the Board voluntarily after due notice. It is not the case of the respondents that the resignation of the petitioner was not accepted after due notice. As such, according to him, he was entitled and has rightly been paid pension under Regulation 75 and in view of the admitted case of the Board that the provisions of the Bihar Pension Rules have been applied mutatis mutandis to the employees of the Board, the only consideration of commutation of pension is as to whether the Government servant is receiving pension. In this case, he was admittedly paid pension and thus was entitled for commutation of pension and was also paid but after getting him deprived of the same for 11 years, which action of the Board cannot be said to be fair. It is also submitted that in any view of the matter, the Board after having allowed commutation cannot be allowed to take such plea.

6. On the other hand, learned Counsel for the Board has submitted that in any view of the matter, now when the commutation has already been allowed and the payment of the commuted value of pension has already been made to the petitioner by treating it as a special case, there is no substance in the grievance of the petitioner especially in the facts and circumstances of the present case. According to the learned Counsel, in fact, the petitioner was not entitled for commutation of pension as it is a case of resignation and not retirement on attaining the age of superannuation.

7. This Court does not find any force in the submission of the learned Counsel for the Board. From the facts aforementioned, I must say that the action of the Board has not been quote fair in dealing with the case of the petitioner. Admittedly, the petitioner applied seeking either voluntary retirement or resignation with pension on 16-10-1987 and the same was disposed of on 25-5-1988 vide Annexure-B by accepting his resignation. There is no explanation as to why the Board took almost 7 months in taking decision on his said application. Moreover, no reason has been assigned for accepting his resignation and not the request for voluntary retirement. Further, this Court does not find any cogent explanation that even though the Respondent-Board took 7 months time to dispose of his said application, but did not wait for 19 days more, which would have made him entitled for condonation of shortage of qualifying service for grant of fixation of his pension on completion of 20 years of service. Moreover, it is not the case of the respondents that the Board did not have power to condone the deficiency of 3 months 19 days of the qualifying service and in fact, the Board allowed such condonation in the case of Sri G.N. Rai Yadav even for a longer period of 5 months 19 days. this Court does not find any substance

in the stand of the Board that condonation of deficiency is admissible only in case of retirement on superannuation. Rule 106, of the Bihar Pension Rules on which reliance has been placed in support of the said stand does not provide that condonation of deficiency in the qualifying service is permissible only in the case of retirement on superannuation. Under Rule 106, the authority competent to sanction pension of a Government servant has been vested with the power to condone the deficiency of 3 months, in his qualifying service and for beyond 3 months the orders of the Provincial Government is required with certain other conditions which are not attracted in the case of the petitioner, according to the case of the Respondent-Board. According to the note to Rule 106 the principle for condonation of deficiency to be observed are that (a) the condonation of short period will ordinarily be allowed, where a Government servant is compelled to retire on invalid pension or condonation of their deficiency is necessary to enable a Government servant to draw pension besides gratuity and (b) condonations of short period should also ordinarily be allowed, where there has been fairly long period of continuous other service (such as service in the District Board, etc. which does not qualify for pension). It does not provide that condonation of deficiency is admissible only in case of retirement on superannuation. Moreover, according to the case of the Board itself 3 months' condonation is available under Finance Department's Memo No. 6287 dated 19-9-1998 adopted by the Board vide Board's resolution No. 1059 dated 27-11 -1989 and the deficiency in the case of the petitioner was of only 3 months 19 days on the date when his resignation was accepted. This only shows that the attitude of the Board has been only to victimise the petitioner so that he could not complete his qualifying period for condonation of deficiency.

8. this Court also does not find any substance in the stand of the Board that the petitioner was not entitled for pension in view of the provisions contained in Rule 101 of the Bihar Pension Rules. The acceptance of resignation of an employee under Regulation 73 does not disentitle him of the terminal benefits admissible under Regulation 75 which includes proportionate pension, if he has at least 10 years of qualifying service, if he had opted for the pension scheme. It is not the case of the Board that according to the said provision to the petitioner did not have qualifying service rather it is admitted that he was granted pension vide PPO No. 572 dated 17-11-1988. Learned Counsel for the Board submitted that in any view of the matter, in view of acceptance of resignation of the petitioner, he was not entitled for grant of benefit of commutation of pension. this Court does not find any substance in the said submission as learned Counsel for the Board has not brought any Rule/Regulation to the notice of this Court, wherein an employee can be denied of commutation of pension in case of grant of pension through on acceptance of resignation. Chapter XIII of the Bihar Pension Rules deals with commutation of pension and from reading of various provisions contained therein, this Court does not find that the benefit of commutation of pension can be denied to the petitioner who is admittedly a pensioner. However, the Board itself on consideration of the case of the petitioner has allowed

commutation of his pension, but it took almost 11 years for which this Court does not find any valid justification. this Court does not find any substance in the defence of the Respondent-Board that the delay was caused because the petitioner did not present himself for medical examination before the Medical Board, in view of the State Government decision contained in Finance Department Memo No. 4019 dated 14-3-1978 providing that a Government servant who applies for commutation within one year of retirement on superannuation would not be subjected to medical examination. It is admitted case of the Board that the petitioner applied for commutation within one year of his being relieved and thus in view of the said Government decision, would not be subjected to medical examination about which the Board also appears to have realised and allowed commutation without he being subjected to medical examination but after-the delay of 11 years. this Court also does not find any valid justification for not complying with the earlier order of this Court for disposal of his application for commutation of pension within 3 months. On account of inaction on the part of the Respondent-Board, the petitioner has been arbitrarily denied of the benefit of second commutation of pension after 10 years which was due in the year 1999. this Court also does not find any justification for deduction of the amount from the sanctioned amount of commuted value of pension of the petitioner on the ground that he had received pension during the said period. In fact, on account of the delay of 11 years in disposal of his application for commutation the petitioner has been kept deprived of handsome amount the value of which has obviously gone up substantially in the last 11 years. As such, he is entitled for penal interest on the said amount from the due date. However, direction for payment of the remaining amount of the sanctioned amount would meet the ends of justice.

9. Accordingly, this writ petition is allowed. The respondents are directed to consider the case of the petitioner for condonation of deficiency for the qualifying 20 years of service and fix his pensionary dues accordingly and pay the remaining amount include of the sanctioned amount of the commuted pension and also allow second commutation of pension in accordance with law within two weeks of the receipt/production of a copy of this order, failing which the Financial Controller shall not draw his salary and allowances till the order is complied and shall also be liable be pay cost of Rs. 1,000 to the petitioner from his pocket.