

(2018) 12 CAT CK 0192

In the Central Administrative Tribunal

Case No : Original Application No. 2976 Of 2017, Miscellaneous Application No. 3134 Of 2017

Dinesh Kumar Saini

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0192

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Tarun Johri, Shailendra Tiwary

Final Decision : Disposed Off

Judgement

1. The applicant had been serving as a Group "A" officer in the post of Deputy Chief Engineer, Western Railway in the cadre of Indian Railway Service of Engineers (IRSE). He submitted his technical resignation from service on 17.08.2011 and thereafter he joined on 09.09.2011 as Executive Director in Mumbai Rail Vikas Corporation (MRVC), which is a Public Sector Undertaking (PSU).

2. Meanwhile, the Delhi Metro Rail Corporation (DMRC), which is a fully Government owned company (by Government of India and Delhi Government), invited applications on 20.04.2012 for the post of Director (Project and Planning) for a period of 5 years. Interviews were held and the applicant was selected by DMRC for this post. He was appointed on this post on 05.09.2012 for a period of 5 years. He joined on 17.10.2012 and thereafter on completion of initial 5 years term, the assignment has been renewed for a further period of 3 years where he is working at present. This post carries a pay scale of Rs.75,000-1,00,000 (IDA) and other allowances/perks/privileges applicable to the Directors to Schedule-A of Central Public Sector Undertaking. The age of superannuation is 62 years.

3. The applicant pleads that as a result of his Railway service, he had been

granted pension and this pension along with DA was being paid to him regularly. The applicant pleads that vide letter dated 16.02.2017, respondent no.3 namely, Financial Advisor & Chief Accounts Officer (Pension) [FA & CAO(Pension)], Western Railway issued directions that dearness relief paid to him w.e.f. 09.09.2011 is not payable as applicant was permanently absorbed in DMRC. Following this, the pension paying bank who are respondent no.4 also issued directions dated 20.04.2017 indicating that the total recovery on this account, works out to Rs.15,83,123/- which is to be recovered in instalments of Rs.21,000 per month. The applicant feels aggrieved by issue of these two letters and the same has been agitated in the instant OA.

4. The applicant pleads that DMRC is not a Government service and his serving DMRC is not same as re-employment, instead, his is a contractual employment, this being five years only. Re-employment has to be in the same post and in same organisation wherein someone is re-employed after retirement. The instant appointment in DMRC is a contractual assignment which is very clear from the said advertisement also. The applicant made representation vide his letter dated 31.03.2017 as well as 11.05.2017 but to no avail.

The applicant has also placed reliance upon a judgment by Hon"ble High Court of Delhi in WP(C) No.2356/2002 delivered on 05.12.2008 titled E.Sreedharan vs. Union of India & others.

5. The respondents pleaded that DMRC is a Government company and one is not permitted to draw dearness relief from two sources. Certain instances had come to the notice of vigilance wherein it came to light that two dearness reliefs were being paid to the pensioner from two sources and as a result, all Zonal Railways were directed on 08.12.2016 to conduct a thorough check to detect such cases where dearness relief on re-employment in Railway PSUs and other organisations has been paid/drawn in violation of the laid down guidelines. It was as a result of these checks that the instant case has also come to light.

The relevant policy instructions, in this regard, were issued as early as 05.08.1999, which are in force currently also. It is provided in these instructions that dearness relief to the Central Government pensioners who are re-employed under Central Government or the State Government or a Corporation/Company/Body/Bank including an autonomous organisation in India or abroad or who had been permanently absorbed in such Corporation/Company/Bank or Autonomous Organisation, shall be payable only to those who satisfy the conditions specified therein. On such re-employment, in respect of such pensioners who had held a Group "A" post, as is the case of applicant, para 3 (b) (iii), of these instructions provides as under:

"iii. Dearness Allowance at the rates applicable from time to time is also admissible on the pay fixed in terms of the orders on the subject, these re-employed pensioners will not be entitled, in addition to any dearness relief on their pension."

In the instant case, the applicant is drawing dearness allowance from DMRC, which is a fully Government owned company, as well as dearness allowance is being drawn from Central Government on his pension. Thus dearness allowances were being continued to be paid from two sources. In view of extent policy, in such cases payment of dearness allowance on pension is not admissible. The present OA, therefore, does not have merit and is required to be dismissed.

6. Heard Sh. Tarun Johri, learned counsel for applicant and Sh. Shailendra Tiwary, learned counsel for respondents at length.

7. The instant case is that of an applicant who was a Group-A Central Government servant and who has been sanctioned pension. Payment of pension has two components - basic pension and dearness relief on the same. The present assignment of the applicant is as a Director in DMRC, which is for a 5 year period and carries a scale, and annual increments alongwith relevant DA as indicated in para 2.0 supra. The assignment in DMRC is for a period of 5 years and on its completion, has since been extended for a period of another 3 years and the applicant will be required to be superannuated when he attains the age of 62 years as per the relevant terms and conditions.

8. The plea of applicant, that it is a contractual assignment and not a re-employment, may be true. But it does not make any difference in respect of issue at hand, as this is in a fully Government owned company. The policy directives continue to be applicable.

The applicant was being paid the basic pension and dearness relief by Central Government and at the same time he was being paid the specified pay as per scale along with dearness relief by the DMRC, which is also a fully Government owned company. Payment of dearness relief on pension, is not admissible in such cases as per policy directives dated 05.08.1999 (para 5 supra).

9. The judgment by Hon"ble High Court relied upon by applicant (para 4 supra) is in the context wherein the basic pension, sanctioned to the petitioner as a result of Government service, was deducted from the pay which was fixed for petitioner in that case on his appointment after his superannuation from Government, on another post in a Government owned company. This deduction of basic pension was disallowed.

This judgment was challenged in the Division Bench of Hon"ble High Court (DPA-242/2009 and CM Nos.7652- 7654/2009). However, this petition was subsequently dismissed on 07.07.2009 as it was withdrawn.

This condition is not holding true in the instant case as basic pension is continued to be paid. As such, ratio of this judgment is not applicable in instant case.

10. In the event, the pleadings of the applicant are not gaining acceptability.

11. As a result, the OA does not sustain and the same is dismissed being devoid of merit.

12. In view of the above order passed in OA, MA No.3134/2017 is disposed off.
There shall be no order as to costs.