
(2004) 02 DEL CK 0048
In the Delhi High Court
Case No : CW No. 2149 of 2001

Jia Lal Kapur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Citation : (2004) 110 DLT 163 : (2004) 73 DRJ 222

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Narottam Vyas, for the Appellant; Aruneshwar Gupta and Amarjit Singh Bedi for respondent No.2., for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Petitioner joined service under the Government of India as Assistant Coal Superintendent Grade-II w.e.f. 25.4.1955. At the time of joining service, petitioner became a member of Contributory Provident Fund under the Government. Petitioner was under the administrative control of the Coal Production and Development Commissioner. Petitioner was paid wages as per CDA pay pattern. On 1.10.1956, National Coal Development Corporation was formed, which took over the development and administration of coal mines owned, run and managed by the Government of India. Services of all employees working under the Coal Production and Development Commissioner were transferred to the National Coal Development Corporation.

2. On 16.8.1965, Government of India issued a letter No. 6C-14(43)/63 setting out the terms and conditions of transfer of the employees to National Coal Development Corporation. The National Coal Development Corporation vide its letter dated 26.11.1965 being letter No. 224/NCDC/58, inter alias noted as under:-

3. Regarding protection to the extension of future revision of pay scales and allowances, liberalisation of service conditions, amendment of Rules etc. made by

the Government to these ex.Coal Production and Development Commissioner's employee who will opt for service with NCDC Ltd., attention is invited to para 2 of the option letter which is quite clear on this point. It provides that the NCDC will take these employees in their employment with effect from 01.10.1956 on the same tenure, same remuneration, the same seniority, the same terms and conditions and same rights and privileges as to his pension, leave, gratuity, provident fund and other matters as would have been admissible to them had they continued in the Government service. This means that these benefits would automatically be admissible to them as and when these are provided to Government employees."

5(iii) As these employees will be governed by the Civil Service Rules, on their exercising option for Corporation service, they will be entitled to pension and gratuity according to the Central Government Pension Rules. Similarly, they will be allowed to commute pension as admissible under Central Government Pension Rules."

3. On 13.9.1966 Hindustan Zinc Limited (respondent No. 2) wrote to the National Coal Development Corporation asking for names of suitable mining engineers for appointment of Chief Managing Engineer (CME) at it's Zawar mines. National Coal Development Corporation, vide letter dated 14.11.1966 sponsored the name of the petitioner. Petitioner's name was accepted by respondent No. 2 vide letter dated 7.12.1966. On 3.1.1967 petitioner was released by National Coal Development Corporation to enable him to join as Chief Mining Engineer under respondent No. 2.

4. Vide letter dated 3.2.1968 respondent No. 2 sought the consent of the petitioner for permanent absorption. Petitioner gave his consent by a letter dated 24.2.1968. Letter dated 24.2.1968 reads as under:-

"To

The Managing Director

Hindustan Zinc Ltd.

Hospital Road,

Udaipur

Sir,

Pleas refer to your letter No. 11(15)/66-Secy. Dated 3rd February, 1968 asking for my consent to permanent absorption in Hindustan Zinc Ltd. I am glad to give my consent subject to the confirmation that on permanent absorption, I will be governed by the same terms and conditions of service as are applicable to the Central Govt. officers of my status thereby allowing me to maintain continuity of my service.

Balance of my earned leave and Provident Fund may kindly be transferred from

NCDC to HZL.

Yours faithfully,"

5. Pursuant to the aforesaid option given to the petitioner for permanent absorption under respondent No. 2 and petitioner's consent for the same, office Order dated 16.3.1968 was issued incorporating the terms and conditions governing the permanent absorption of the petitioner under respondent No. 2. Inter alia, following was one of the term:-

"(1) He will be eligible to same terms and conditions of service and benefits as are admissible to a Central Government officer of his status."

6. On 29.8.1984 Government of India issued an office memorandum pertaining to the counting of service for purposes of pension of personnel whose services are transferred between Central Government departments and autonomous bodies. Said office memorandum, inter alias directed as under:-

"2 A number of Central autonomous/ statutory bodies have also introduced pension scheme for their employees on the lines of the pension scheme available to the Central Government employees. It has, Therefore, been urged by such autonomous/ statutory bodies that the service rendered by their employees under the Central Government or other autonomous bodies before joining the autonomous body may be allowed to be counted in combination with service in the autonomous body, for the purpose of pension, subject to certain conditions. Similar provisions for employees of autonomous body going over to Central Government have also been urged. In other words, the suggestion is that the benefit of pension based on combined service should be introduced."

7. It was further stipulated in the aforesaid office memorandum :-

(i) A permanent Central Government employee borne on pensionable establishment, on absorption under such autonomous body will be eligible for pro-rata retirement benefits in accordance with the provision of the Ministry of Finance O.M.No. 26(18) EV(B)/75 dated the 8th April 1976, as amended from time to time. In case of quasi-permanent or temporary employees, the terminal gratuity as may be admissible under the Rules would be actually payable to the individual on the date when pro-rate retirement benefits to permanent employees become payable. However, in the case of absorption of a Government employee with CPF benefits, in such an autonomous organisation, the amount of his subscription and the Governments contribution, if any, together with interest thereon shall be transferred to his new Provident Fund account with the consent of that body

(ii) An employee of an autonomous body on permanent absorption under the Central Government will have the option either to receive CPF benefits which have accrued to him from the autonomous body and start his service afresh in Government or choose to count service rendered in that body as qualifying service for pension in Government by foregoing employer's share of contributory

Provident Fund contributions with interest thereon, which will be paid to the concerned Government Department by the autonomous body. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employees shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final."

8. Petitioner, admittedly did not opt for pension. He, however, claims that this circular was not brought to his notice.

9. On 1.5.1997 Government of India issued another office memorandum No. 4/1/87 PIC-1. Inter alia, the office memorandum directed as under:-

"The CPF beneficiaries, who were in service on 1.1.1986 but have since retired and in whose case retirement benefit have also been paid under the CPF scheme, will have an option to have their retirement benefits calculated under the pension scheme provided they refund to the Government, the government contribution to the Contributory Provident Fund and the interest thereon, drawn by them at the time of settlement of the CPF amount. Such option shall be exercised latest by 30.9.1987."

10. Petitioner retired from service under respondent No. 2 as Chief Manager (Mines) on 30.4.1987. On his retirement, petitioner was paid his terminal benefits. Since the petitioner when he joined service under the Government of India was a member of the Contributory Provident Fund, he received the amount lying credited in his account in the said fund, which included the employer's contribution. Petitioner remained satisfied.

11. It was only in the year 1999 that the petitioner raised an issue. Petitioner stated that the office memorandum dated 29.8.1984 and the office memorandum dated 1.5.1987 was never brought to his notice. Had they been so brought, petitioner would have exercised his option to opt for the pension scheme. Vide letter dated 15.3.1999 petitioner made a request to respondent No. 2 that he be permitted to opt for the pension scheme. Petitioner took up the issue with the Union of India and finding no response, filed the present petition praying that mandamus be issued to the respondents to grant pension to the petitioners w.e.f. 1.5.1987 on the scale applicable to the Central Government employees from time to time.

12. Case argued at the time of hearing by learned counsel for the petitioner was that when the petitioner initially joined service under the Government of India, all Rules and Regulations applicable to Government servants applied to him. When his services were taken over by the National Coal Development Corporation Limited, it was a specific term that all privileges including pension, leave, gratuity, provident fund etc. as applicable to government servants would be applicable to the petitioner. When services of the petitioner were taken over by Hindustan Zinc Ltd., it was one of the term that conditions of service and benefits would be as admissible to employees of Central Government. Office memorandum dated 29.8.1984 mandated that service rendered by the

employees before their absorption in statutory/autonomous bodies under the Government would be counted for purposes of terminal benefits. The employee who was in service under the Government but joins an autonomous body would have the option to receive Contributory Provident Fund benefits or pension. Vide office memorandum dated 1.5.1987 government employees who had opted for Contributory Provident Fund were given an option to opt for the pension scheme provided they were in service as on 1.1.1986. Petitioner being in service on 1.1.1986 would Therefore be entitled to opt for the pension scheme as it was a term of his absorption under respondent No. 2 that he would be entitled to all the benefits which were available to Central Government employees. Office memorandum dated 1.5.1987 gave benefit to Central Government employees, in that, option was given to shift from Contributory Provident Fund Scheme to the Pension Scheme. This circular was never brought to his notice. Had it been brought to his notice, he would have opted for pension.

13. Petitioner relies upon the judgment of the Supreme Court reported as Union of India (UOI) and Others Vs. D.R.R. Sastri, . Petitioner also relies upon a judgment passed in T.A.No. 27/1987 by the Central Administrative Tribunal against which decision, Petition For Special Leave To Appeal being SLP No. 5973/1988 was dismissed. Petitioner also relies upon the judgment of the Central Administrative Tribunal in OA NO. 842/1989.

14. Case of the respondent No. 2 is that the petitioner was a member of the Contributory Provident Fund Scheme when he was in employment under the Government of India. He continued to be a member of the said scheme when he was employed under the National Coal Development Corporation and he continued to be covered by the said scheme when he joined respondent No. 2. All employees of the Government of India are governed by the C.D.A. Pay pattern. Government of India, prior to the recommendations of the 4th Pay Commission had given an option to the employees to opt for either the pension scheme or the Contributory Fund Scheme. Post 4th Pay Commission recommendations said benefit of option was again given. As far as the petitioner was concerned, when he joined under respondent No. 2 his pay was governed by the C.D.A. pattern but in the year 1979 all employees, including the petitioner switched over to the I.D.A. pay pattern. Post 1979 there was no parity in the pay scales of the employees governed by the C.D.A. pay pattern and I.D.A. pay pattern. Therefore, petitioner could not claim right to opt for pension which was applicable only to the employees whose pay scales were governed by the C.D.A. pay pattern. Though specifically not pleaded in the counter affidavit, but it was argued that employees, including the petitioner agreed to switched over to the I.D.A. pay pattern because in the year 1979, under the I.D.A. pay pattern they got higher wages. This submission was not refuted by counsel for the petitioner. It was further contended that the petitioner retired on 30.4.1987 and received his terminal benefits which included the employer's contribution to the Contributory Provident Fund account of the petitioner. It was too late in the day for the petitioner to make a claim for pension in the year 1999. Last submission

made was that respondent No. 2 was disinvested in the year 2002. 64% of it's equity went into private hands. Respondent No. 2 had ceased to be a government company. None of the employees of respondent No. 2 were covered by the pension scheme. Situation had altered irreversibly

15. Though, preliminary object was taken pertaining to the territorial jurisdiction of this court, but counsel for respondents did not seriously urge the said preliminary contention.

16. Facts aforesaid bring out the position that the petitioner, when employed under the Central Government had opted for Contributory Provident Fund. When he opted for service under National Coal Development Corporation, he continued to be a member of the Contributory Provident Fund. Thereafter, when he joined service under respondent No. 2 he continued to be a member of the Contributory Provident Fund. On his superannuation w.e.f. 30.4.1987, petitioner received the entire amount under the Contributory Provident Fund Scheme, which included the employer's contribution. Grievance of the petitioner is that the circulars dated 29.8.1984 and 1.5.1987 were never brought to his notice and had they been so brought, he would have opted for the pension scheme. The circulars in question are applicable to the Central Government Employees pre and pursuant to the recommendations of the 4th Pay Commission.

17. It is to be noted that the pay of all Central Government Employees is governed by C.D.A. pay pattern.

18. As noted in the pleadings of respondent No. 2 which fact has not been denied by the petitioner, in the year 1979 petitioner had shifted to pay pattern fixed under the I.D.A. pay pattern and ceased to be governed by the C.D.A. pay pattern. Inherently, 4th Pay Commission recommendations would not apply to the petitioner.

19. Contention of the petitioner that when he joined service under respondent No. 2, it was a condition of his service that he would be eligible to all the benefits as are admissible to Central Government officers, if accepted, would at best mean that the respondent No. 2 could not take away a benefit which had accrued to the petitioner when he joined service under it and would not mean that benefit which the Central Government gave to it's employees thereafter would ensure to the petitioner. Assuming it to be so, w.e.f. the year 1979 the pay pattern of the petitioner came to be governed by the I.D.A pay pattern. Petitioner parted company with his past. His pay scale got materially altered vis-a-vis his counter parts who continued under Government service. Petitioner got a better pay.

20. Judgments of the Central Administrative Tribunal cited do not apply as they relate to employees under the railways, but working in different divisions.

21. Judgment of the Supreme Court in D.R.R. Shastri's case relied upon by the petitioner may be noted. In the said judgment, the Supreme Court was dealing with the case of an employee who had joined the Indian Railways in the year

1950. He proceeded on deputation to Heavy Engineering Corporation on 26.6.1973. While in service under the railways he had opted for Contributory Provident Fund Scheme. In the year 1974, on the basis of the recommendations of the Third Pay Commission liberalize pension scheme was introduced. Railway authorities given option to the persons governed by the C.P.F. Scheme to opt for the Liberalized Pension Scheme. D.R.R.Shastri claimed that even he had a right to opt for the pension scheme. It is relevant to note that the judgment noted the fact that the Liberalized Pension Scheme introduced on 22.7.1974 gave an option to the railways employees who were in service under the railway as on 1.1.1973. Mr. D.R.R.Shastri was in service under the railways on 1.1.1973. The circular introducing the Liberalized Pension Scheme was not brought to his notice when he was an employee of the railways. Further, as noted in paragraph 4 of the judgment it was brought to the notice of the Supreme Court at the hearing held on 6.5.1995 that similar benefit was granted to one K.V.Kasturi by the Government. The Union Government was directed to place the necessary material as to on what basis case of Shri Kasturi was different from that of Mr. D.R.R.Shastri. As noted in para 4, no material was brought on record. It has further been noted in paragraph 4 that the Heavy Engineering Corporation had not clarified to the court as to whether the period rendered by Mr. D.R.R.Shastri when in service under the railways was taken into account while working out the terminal dues. Information sought by the Court was not supplied. While granting relief to Mr. D.R.R.Shastri, noting the aforesaid omissions, following was held:-

"In the aforesaid premises and in the absence of any Explanation from the appellant to indicate any special feature for granting similar relief as late as in the year 1994 to Shri K.V.Kasthuri, we see no justification for our interference with the impugned direction of the Tribunal. The respondent had served for about 22 years and he should not be deprived of the pensionary benefit when the Government itself had come forward with the Liberalised Pension Scheme and give option to the persons already retired to come over to the pension scheme. But his pension is to be calculated as on 31-7-1972 in accordance with the Railway Board's letter dated 23-7-1974 and in compliance with all the necessary formalities by the respondent in accordance with the said circular. Subject to the aforesaid observations this appeal is dismissed but in the circumstances there will be no Order as to costs."

22. One further fact cannot be lost sight of, namely the disinvestment of respondent No. 2. It has ceased to be a Government company. 64% of its equity has gone into private hands. Though not on record, one can safely assume that the private party which purchased 64% of the equity of the Company would have considered the liability position of the company and it would have been indicated that there is no recurring liability to pay pension. As far as the petitioner is concerned, he has got benefit of C.P.F. scheme which includes the employees contribution.

23. For the reasons stated above the writ petition is dismissed. In facts and

circumstances of the case, there shall be no Orders as to costs.