

(2022) 05 DEL CK 0337

In the Delhi High Court

Case No : Civil Writ Petition No. 3685 Of 2019

Krishan Kumar Lal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Citation : (2022) 05 DEL CK 0337

Hon'ble Judges : Sanjeev Sachdeva, J;Tushar Rao Gedela, J

Bench : Division Bench

Advocate : Ankur Chibber, Gigi C. George, Dheeraj Singh

Judgement

Sanjeev Sachdeva, J

1. Petitioner impugns order dated 09.01.2018 in OA No. 3418/2016; order dated 27.02.2018 in RA No. 31/2018 and order dated 13.08.2018 in MA No.3049/2018. Petitioner further seeks a direction to the respondents to release the pro-rata pension with effect from 31.05.1977 and the terminal benefits in respect of the petitioner alongwith interest.

2. Petitioner was appointed, on 30.09.1963, as a Section Officer (Civil) with the respondent/CPWD. The post was re-designated as Junior Engineer (Civil). CPWD is a pensionable organization. Petitioner was declared quasi permanent with effect from 30.09.1966. He continued to work with CPWD till 31.05.1976.

3. In 1975, petitioner applied through proper channels for the post of Assistant Engineer (Civil) in International Airport Authority of India (IAAI, for short), a non-pensionable organization.

4. On being selected on the said post in IAAI, petitioner submitted his technical resignation and was relieved on 31.05.1976 and on the same day joined IAAI. His parent department i.e., CPWD retained his lien for two years.

5. Petitioner thereafter, was absorbed in IAAI on 31.05.1977, where he continued to work till, he attained the age of superannuation on 31.12.1997.

6. Petitioner had served CPWD from 30.06.1963 to 31.05.1976 i.e., for a period of 12 years and 8 months. Petitioner was also charged one year lien charges, thus the total pensionable service as per the petitioner became 13 years and 8 months.

7. On 04.02.2016, the case of the petitioner was forwarded by the department to the competent authority for consideration for grant of pro-rata pension.

8. By order dated 03.08.2016, the request was turned down on the ground that he was quasi permanent at the time of absorption in IAAI and thus, not entitled for retiral benefits.

9. Petitioner filed the subject petition before the Central Administrative Tribunal. By the impugned order dated 09.01.2018, the petition was rejected primarily on the ground that at the time of absorption, petitioner was a quasi-permanent employee and not holding any substantive post in the Government and the rules regarding substantive appointment were amended only in 1988, wherein it was decided that an employee would be declared permanent/substantive on completion of the probation period.

10. The Tribunal further held that the said provision did not apply to the petitioner, who was absorbed after 12 years but before the amendment came into effect.

11. Petitioner filed a review against the said order; which review was rejected by order dated 27.02.2018. Petitioner thereafter, filed the subject MA 3049/2018 relying on the decision of a coordinate Bench of the Tribunal in OA 3730/2015 dated 04.05.2018 titled U.K. Goel Vs. Union of India.

12. The application filed by the petitioner relying on the decision of the coordinate Bench was rejected holding that the same was not maintainable.

13. Petitioner has consequently impugned the orders passed in the original OA, Review Application as well as the petitioner's application relying on the decision in U.K. Goel (supra).

14. Learned counsel for petitioner points out that respondents had also assailed the judgment in the case of U.K. Goel (supra) by filing a Writ Petition being W.P. (C) No. 1292/2019. It is pointed out that said Writ Petition was unconditionally withdrawn on 08.02.2019.

15. Learned counsel for petitioner submits that as per his information, the judgment in the case of U.K. Goel (supra) has been duly implemented by the respondents.

16. Learned counsel for respondents concedes that the judgment in the case of U.K. Goel (supra) has been duly implemented.

17. Learned counsel appearing for respondents contends that the amended rules came into force in 1988 and were not applicable to the case of the petitioner and

consequently petitioner is not entitled to the relief, as claimed, of pro-rata pension.

18. We are unable to accept the contention of learned counsel for the respondents for the reasons that the facts in the case of U.K. Goel (supra) are identical to the case of the Petitioner.

19. The facts in the case of U.K. Goel (supra) are that U.K. Goel was appointed as a Section Officer (Electrical) on temporary basis on 17.02.1966 and he was declared quasi permanent on 04.06.1969. U.K. Goel in the year 1973 also joined IAAI and was relieved from CPWD by order dated 16.07.1973. U.K. Goel was initially on deputation to IAAI and was appointed on 27.05.1976 by IAAI.

20. As in the case of the petitioner, U.K. Goel was also denied the benefit of pro-rata pension. The ground for denial of the benefit was the same as in the case of the petitioner i.e., that before 01.01.1986, only those employees were entitled to pension who were permanent or quasi permanent government employees and had completed 20 years of service. U.K. Goel was quasi permanent and had rendered 11 years, 6 months and 10 days of service in CPWD.

21. Central Administrative Tribunal in the case of U.K. Goel, in its judgment dated 04.05.2018, relied on the judgment of the High Court of Judicature at Patna in Union of India Vs. Smt. Sita Devi w/o late Sh. Mithilesh Kumar Sinha (Civil Writ Jurisdiction CaseNo.15591/2013) decided on 24.03.2015.

22. The Tribunal in U.K. Goel (supra) held that CPWD had allowed the applicant (U.K. Goel) as well as few other CPWD Junior Engineers to retain the lien for two years after they were selected as Assistant Engineers by IAAI and that lien was normally allowed to be retained to permanent employees and hence, the action of the respondents in allowing the applicant to retain his lien for two years vide order dated 19.07.1996 went on to establish that applicant was treated as a regular employee even though on the record he continued as quasi permanent employee in CPWD.

23. Consequently, the Tribunal directed the respondents to grant pensionary benefits to the petitioner therein (U.K. Goel) taking into consideration 11 years, 6 months and 10 days' service rendered by him in CPWD.

24. As noticed hereinabove, the facts in U.K. Goel case are identical to the facts of the case of the petitioner. In fact, petitioner appears to be one of the Junior Engineers, who had in 1976 transferred to IAAI after taking due permission from CPWD. The facts in the case of U.K. Goel apply on all fours to the case of the petitioner.

25. As noticed earlier, respondents had assailed the judgment in the case of U.K. Goel before this Court and unconditionally withdrawn the challenge to the said judgment and thereafter, implemented the said order.

26. There is no ground for the respondents to now deny similar benefit to the

petitioner who is identically situated as U.K. Goel.

27. Similar view was taken by the High Court of Judicature at Madras in P.P. Bhaskaran Vs. Central Administrative Tribunal by its judgment dated 18.11.2013 in W.P. No.32214 of 2012. The facts in P.P. Bhaskaran show that P.P. Bhaskaran was similarly situated Junior Engineer, who was appointed as Section Officer in CPWD on 20.11.1964 and was sent on deputation to IAAI on 08.07.1975 and was subsequently absorbed with effect from 01.09.1977.

28. We are informed that judgment in the case of P.P. Bhaskaran (supra) has also been implemented by the respondents.

29. It may also be noticed that the Supreme Court in Pardhuman Kumar Jain Vs. Union of India, 1994 Suppl. (2) SCC 548 in similar circumstances held that an employee appointed in a substantive capacity against permanent post is entitled to pro-rata pension and other terminal benefits in respect of service rendered by him under the Central Government.

30. In view of the above, we are unable to accept the reasoning given by the Tribunal in its order dated 09.01.2018 holding that since the petitioner was working in a quasi-permanent capacity, he would not be entitled to pro-rata pension.

31. Respondents themselves in respect of identically situated individuals, who were on quasi permanent post at the time of their absorption in IAAI and had not completed 20 years of service, have granted pro-rata pension.

32. Consequently, the impugned orders dated 09.01.2018; 27.02.2018 and 13.08.2018 are set aside. It is held that petitioner is entitled to pro-rata pension for the period of service rendered by the petitioner in CPWD. However, keeping in view the facts and circumstances of the case, we direct that petitioner shall be paid arrears with effect from a period of three years preceding the date of the filing of the Original Application before the Central Administrative Tribunal with interest @ 7% per annum. Respondents shall implement the order within a period of eight weeks from today.

33. Petition is allowed in the above terms.

34. Order dasti under signatures of the Court Master.