(1970) 01 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ Appeal No. 1528 of 1967

Krishna Prasada APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 23-01-1970

Acts Referred:

Citation : (1970) 6 DLT 282

Hon'ble Judges : T.V.R. Tatachari, J

Bench : Single Bench

Advocate : I.M. Lal and R.M. Mehta, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) This writ petition has been filed by Shri Krishna Prasada regarding the payment of the uncommuted portion of his annuity. The respondents in the writ petition are: (1) Union of India; and (2) the State of Uttar Pradesh. The petitioner prayed for the issuance of an appropriate writ direction or order directing the respondents to pay him or to his account the uncommuted portion of his annuity (500) through the Home Treasury (in the United Kingdom) in pounds sterling as required by Rule or through agency of their own." In opposition to the writ petition, a counter affidavit of Shri A. N. Batabyal, Under Secretary to the Government of India, Ministry of Home Affairs, has been filed on behalf of respondent No. 1 and a counter-affidavit of Shri A. B. L. Gupta, Superintendent, Appointment (C) Department, Uttar Pradesh, has been filed on behalf of respondent No. 2.

(2) The petitioner joined the Indian Civil Service in 1921, having been appointed to it by the Secretary of State in Council. His service was continued after India attained independence, and he was assigned to the

(3) Under Article 561 of the Civil Service Regulations, as amended in 1921 and before it was amended in 1957, "an officer who has been 25 years in service counting from the date his covenant, or from the date of the dispatch of the

Secretary of State announcing his appointment (whichever may have been earlier), and who has rendered 21 years'' active service is entitled ,on his resignation of service being accepted, to an annuity of Rs. 10,666.10-8- the annuity is subject to a minimum of l000." In terms of the said Article, the Governor of the State of Utter Pradesh sanctioned the grant to the petitioner of an annuity of Rs. 10,666-10-8 subject to a minimum of 1,000 per annum with effect from 2nd April, 1954, payable from the Treasury at New Delhi (vide Annexure A/I, dated 20th May, 1954).

(4) Article 983 of the Civil Service Regulations, as amended in 1921 and before it was amended in 1957, was as follows

"983(A)When payment of annuities or gratuities is taken at the Home Treasury, it may be taken at the option of the recipient either in rupees converted into sterling at the rate of exchange declared to exist on the date on which payment falls due or at the fixed sterling minimum ; (b) When payment is taken in India, it may be taken at the option of the recipient either in rupees or at the fixed sterling minimum converted into rupees at the rate of exchange declared to exist on the date on which payment falls due ; Provided that annuitants of the following classes may, at their option, receive the fixed sterling minimum converted into rupees at the rate of Is. 4d. to the rupees, so long as they continue to reside in India :- (i) Annuitants resident in India who were in receipt of annuities converted at this rate on the 1st February, 1921 (ii) annuitants of Indian domicile who were on the 1st February, 1921, temporarily drawing their annuities in sterling; (iii) annuitants of Indian domicile who were serving in the Indian Civil Service on 1st February, 1921".

Subsequently, by a resolution of the Secretary of State in India in Council (Annexure R.2), dated 29th December, 1926, the words "the rate of exchange declared to exist on the date on which payment falls due" in Article 983(a) and (b) of the Regulations were substituted by the words "such rate of exchange as the Secretary of State in Council may by order prescribe". By another Resolution (Annexure R-3), dated 29th December, 1926, the Secretary of State in Council decided that "where a rule made by the Secretary of state in Council regarding payment or recoveries refers to a rate of exchange which the Secretary of State in Council may by order prescribe, that rate shall, until further orders, be the rate notified by the Controller of the Currency for telegraphic transfers from Calcutta to London on the 20th of the month proceeding the-it in which the payment or recovery is made" Again, by a resolution (Annexure R 4), dated 25th February, 1928, the Secretary of State in Council decided that

"Where a Rule made by the Secretary of State in Council refers to the rate of exchange which the Secretary of State in Council may by order prescribe, the rate shall, until further orders, be Is. 6d."

According to the respondents, no further alteration in the said rate of exchange was made by the Secretary of State, and the said rate of exchange continued to be in force.

(5) By a Notification No. F. 7 (19) EV/57, dated 29th June, 1957 the Government of Indian substituted the Articles 561 and 983 by two new Articles, which run as under:-

"561-RETIREMENTand annuity An officer who has been twenty five years in the service counting from the date of his covenant or from the date of the dispatch of the Secretary of State announcing his appointment whichever may have been earlier and who has required 21 years active service is entitled on his resignation of the service being accepted, to an annuity of Rs. 13,33354 (Rs. 13,333.33Paise) with effect from the 1st April, 1957), if he is an Indian Officer or, being a non, Indian Officer, draws his pension in India, and to an annuity of Rs. 19, 656-10-8 (Rs. 10,666.66 Paise with effect from the 1st April, 1957). subject to a minimum of 1000, if he is a non-Indian Officer and draws his pension through the High Commissioner for India in London. 983-Payment of annuities shall be made in India and in rupees. Provided that in the case of non-Indian Officers such payment may be made as under:- (a) in India, in rupees (b) through the High Commissioner for India in the United Kingdom, in sterling at such rate of exchange as the President may, by order, prescribe."

It was stated in the said notification that the said substitution shall be deemed to have effect from the 12th June, 1956, in its application to members of the Indian Administrative Service, who, before be. coming such members, were members of the Indian Civil Service,

(6) It may be stated here that the petitioner got half of his annuity (500) commuted.

(7) In 1965, respondent No. 1 devalued the rupee, with the result that the petitioner''s annuity in terms of pounds sterling when paid in rupees was affected. He appears to have asked for payment of the uncommuted half of his annuity (500) converted into rupees at the devalued rate of exchange of the rupees, but the same was refused. On 28th December, 1956, respondent No. 1 issued a Memorandum (Annexure ''B'') setting out a decision of the Central Government regarding the effect of devaluation on pensions sanctioned under Civil Service Rules in the case of I. C. S. Officers and non-I.C.S. Officers. The said decision in the case of I.C. S. Officers runs as follows:-

"(i) The effect of devaluation on pensions sanctioned under Civil Rules has inter alias been examines and the position is as under :- I. C. S. Officers. Officers who retired after 12th June, 1956. In the case of officers who retired on or after 12th June, 1956 annuity is payable only in India and in rupees at the rate of Rs. 13,333.33. Non Indian Officers drawing annuity in U. K.. will, however, be eligible for a minimum of 1,000. la other words, in neither of these case) devaluation will have any effect. Officers who retired prior to 12th June, 1956. (a) Where the annuity has been expressed in sterling in the Pension Payment Order. In the case of those who retired prior to 12th June, 1955 the wording of the Pension

Payment Order would indicate the amount of the annuity as well as the currency in which it is to be paid. If they are residing abroad and their annuity has been expressed in sterling already, no change is called for. Where in such cases, the pensioner is resident in India, the current rate of exchange will apply. Where such a pensioner is resident neither in India nor in U. K.. and he draws the annuity in foreign currency through official channels it will be treated as if he draws this annuity in sterling through the High Commissioner. (b) Where the annuity has been expressed in rupees in the pensions Payment Order. (i) In regard to cases of retirement before 12th June, 1956 where the annuity is received in rupees under the provisions of Article 983 (2) as it stood before 12th June, 1956, the amount of annuity will remain unchanged. (ii) Where a pensioner is resident neither in India nor in U. K., but draws annuity in India and has it remitted through normal banking channels, the current exchange rate will apply."

(8) According to the petitioner, since he had retired on 2nd April, 1954, i.e., before 1957, he was entitled to have his annuity, which was fixed in pounds sterling and was being paid in India in rupees converted at the rate of Is 6d. to a rupee, paid to him at the devalued rate of exchange of the rupee, and he claimed accordingly. His claim was, however, not accepted by the respondents. He ther upon demanded by a letter (Annexure ''C'') dated 15th October, 1967, in exercise of the option given to him by the Articles 561 and 983 before their amendment in 1957, that the uncommuted portion of his annuity (500) be paid to him in pounds sterling in the United Kingdom. According to the petitioner, he did not receive any reply from the respondents. He, Therefore, filed the present writ petition on 23-11-1967, praying for the issuance of an appropriate writ, order or direction directing the respondents to pay him or to this account the "uncommuted portion of his annuity (500) through the Home Treasury as required by Rule or through agency of their own".

(9) As already stated, in opposition to the writ petition a counter affidavit of Shri A. N. Batabyalhas been filed on behalf of respondent No. 1. It is not necessary to set out the various averments made in the said counter-affidavit. It is sufficient to state that in paragraph 9 of the counter-affidavit, it was clearly stated that.

'' IN reply to para 7, it is not that the petitioner had the option to elect to draw his annuity in India or "in U. K. I crave leave to submit that in the exercise of this option the petitioner elected to draw his annuity in India and in rupees converted at the rate of exchange which the Secretary of State in Council had prescribed in the year 1928 and which continued as the same on the date of retirement of the petitioner. It is denied that the petitioner has any legal right to change the option exercised by him on the date of his retirement and which had been indicated by him voluntarily in his application to be the Accountant General, Uttar Pradesh."

Again, in paragraph 17 of the counter-affidavit, it was stated as follows:

" ON the day, the petitioner sought retirement from the Indian Civil Service and his said request was granted, he was entitled to receive his annuity at the Home

Treasury of the Government of United 1 in sterling minimum of 1000or to draw annuity in India in rupees to the extent of Rs. 10,666-10-801 sterling equivalent of l000 converted at the rate of exchange @ Is 6d. a rupee which the Secretary of State had approved in his dispatch No. 4 Financial, dated the 18th January, 1923, and which continued to be operative on the date of retirement of the petitioner."

Similarly, a counter. affidavit of Shri A.B.L. Gupta has been filed on behalf of respondent No. 2. In paragraph 7 of the said counter affidavit, it was stated as follows :- That regarding the contents of paragraph 7, it is admitted that the petitioner has option to elect to draw his annuity in India or in U.K. The petitioner in the exercise of this option elected to draw his annuity in India and in rupees converted at the rate of exchange prescribed by the Secretary of State in Council in the year 1928 and which continued till the date of his retirement. It is denied that the petitioner has any legal right to change the option exercised by him on the date of his retirement which he must have voluntarily indicated in the application to the Accountant General, U. K., and accordingly the order No. 2983/11A-573/53, dated 20th May, 1954, sanctioning the annuity in the rate of rupees was made by the Government of Uttar Pradesh." Again, in paragraph 10 of the counter-affidavit, it was stated as follows :-

" THAT regarding the contents of paragraph 10, the deponent has to say that, subject to the submissions made in reply to paragraph

(7) It is denied that the aforesaid Article 983 of the Civil Service Regulations confers any right on the petitioner to change his option at any time and to ask for the payment of the annuity in any currency, which might be advantageous to him for the time being. The option is restricted to currency and the place at the time of his retirement. The option having been once voluntarily exercised cannot be changed from time to time." An averment to the same effect was made in paragraph 13. Again, in paragraph 15, it was stated as under : -

" THAT the petitioner exercised his option and is being paid at the rate of Is. 8d. a rupee and his annuity comes to Rs. 13,333. 544. Out of this amount, the petitioner has already got half the annuity commuted and the other half he has been drawing regularly and as referred to in earlier paragraphs, he cannot ask for change in that option because he has exercised his option for getting his annuity in India and in terms of the rupees at the rate which was prevalent at that time. The amendment made in the Regulations do not govern the case of the petitioner, Therefore, he cannot question the same."

Thus, the respondents admitted in the counter-affidavits filed on their behalf that the petitioner had the option to elect to draw his annuity in India or in the United Kingdom. He only pleaded that the petitioner had, in the exercise of the said option, elected to draw bids annuity in India, and that his annuity converted into rupees at the rate of exchange prescribed by the Secretary of State in Council in the year 1928, which comes to Rs. 13,333.33 was being paid to him, and that it was not open to the petitioner to change his option. The petitioner relies on the unamended articles 561 and 983 because he had retired before the said Articles were amended in 1957. Admittedly, be has an option under the said Articles to elect to draw his annuity in India or in the United Kingdom. He exercised his option once and he wants to exercise has option again. The only question, Therefore, for determination in this writ petition is as to whether the petitioner, having already exercised his option and elected to draw his annuity converted into rupees in India, could again change the option and elect to draw his annuity in sterling in the United Kingdom. Shri I.M.Lall learned counsel for the petitioner, as well as Shri Mehta, learned counsel for respondent No 1. are agreed that this is the only question that arises for determination in the present writ petition, and the said question alone was argued by them. Shri Lall contended that the plea put forward by the respondents ignores the provisions in Article 984 of the Civil Service Regulations. The said Article, which has not been amended, runs as under : -

"984.Transfer from Home Treasury to an Indian Treasury, and vice versa is permitted twice only."

It is quite plain that the said Article permits the transfer of payment from the Home Treasury to an Indian Treasury and vice versa twice only. In other words, the petitioner had exercised his option once to take his pension or annuity in rupees in India, and the aforesaid Articles permits him to exercise his option for a second time and ask for payment of his pension or annuity in sterling in the United Kingdom.. The only reply which Shri Mehta gave was what the provision in Article 984 was permissive and discretionary and does not confer a right upon the annuitant. I do not think so. The words "is permitted." do not leave the matter to the discretion of the Government. The decision to permit the annuitant to transfer from the Home Treasury to an Indian Treasury and vice versa for a record time is implicit in the said words, and it is not as if the decision is left open to the Government. The decision has been taken and expressed in by the Article itself. It may be stated here that Shri Lall,I on instructions from the petitioners who was present in the Court, stated that the petitioner does not ask for payment of his annuity in the rupees in India at the devalued rate, but asks only for payment in sterling in the United Kingdom. His claim is fully supported by the provisions in Article 984 of the Civil Service Regulations.

(10) For the above reasons, I allow the writ petition and direct the respondents to pay the petitioner the uncommuted portion of his annuity (500) in pounds sterling in the United Kingdom. The petitioner is entitled to his costs of this writ petition which are fixed at Rs 250.