

(2004) 11 DEL CK 0164
In the Delhi High Court
Case No : Writ Petition (C) 268 of 2001

Lt. Col. P.K. Kapur (Retd.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-11-2004

Acts Referred:

Citation : (2004) 11 DEL CK 0164

Hon'ble Judges : Gita Mittal, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Party in perso, for the Appellant; Kailash Gambhir and Gaurav Sharma, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—By the present writ petition, the petitioner is challenging reduction in the period of weightage allowed to him for the purposes of computation of his pension and also reduction of the benefit of war injury disability element in the pension granted to him. According to the petitioner, he was commissioned to the Indian Army on 26th January, 1964 and was seriously injured in the Indo-Pak war of 1965. The petitioner was granted permanent commission and retained in the Army despite his permanent disability on account of the injury sustained by him. Prior to his retirement, the petitioner had attained the rank of Lt. Colonel (Time Scale) and finally superannuated from service at the age of 51 years on 30th November, 1989.

2. The petitioner has alleged discrimination in grant of pension and pensionary benefits to him consequent upon the implementation of the recommendations of the Fifth Pay Commission with effect from 1st January, 1996. According to the petitioner, he was informed vide letter dated 23rd October, 1999 with regard to his pension fixation wherein he has been allowed only five years weightage in arriving at the effective length of service for the purposes of calculation of his pension. The petitioner claims that since Army Officers retire at a comparatively young age, certain number of years as weightage, rank wise, are required to be

added to the actual years of service for the purposes of computation of the pension. Consequent upon the implementation of the recommendations of the Fifth Central Pay Commission with effect from 1st January, 1996, according to the petitioner, the full pension for the respective Army Officers rank is taken as 50% of the amount comprising minimum basic pay of the rank and the account paid to the respective rank. The petitioner claimed that full pension is granted for 33 years of service as is applicable to the Civilian officers in the Central Government. Though the petitioner places reliance on the Government circular prescribing weightage of specified number of years for computation of pension, the petitioner contends that the weightage assigned to the rank of Lt. Colonel (Time Scale) is less than the weightage prescribed for a Major. The petitioner is seeking weightage of light years on the ground that the prescribed weightage of five years is discriminatory and has no nexus with the purpose sought to be achieved. According to the petitioner, his representation to the Government of India in this behalf dated 19th February 2000 has been of no avail and hence the present petition.

3. The petitioner alleges that upon his retirement on 30th November, 1989, initially his pension fixation was done vide PPO No. M/1703/89 allowing the weightage of eight years. The change of weightage from eight years to five years effected after Fifth Central Pay Commission has caused prejudice to the petitioner and is most illegal.

4. An application for amendment of the petition was filed seeking to challenge the order dated 27th July, 2001 whereby the respondents had re-fixed part of the petitioner's pension to allow disability element of war injury pension by allowing 30% disablement. According to the petitioner, this was done incorrectly in as much as in terms of para 5 of the letter dated 3rd February, 2000 of the Government of India, Ministry of Personnel, for disabilities assessed as less than 50%, the disability element of pension was to be fixed at 50%. Consequently, the petitioner being permanent disabled for life due to war injury with 30% injury assessed by the Medical Board, the petitioner is entitled to disability pension by reckoning his disablement at 50%.

5. Though the perusal of the records show that the amendment application being CM No. 186 of 2003 filed by the petitioner remained pending, however, the respondents filed a counter affidavit to the amended petition and pleadings in respect of the amended petition were completed on record. Both the parties have argued the petition before us if the amendment was permitted and consequently, we allow the amendment and proceed to give our decision on the grounds raised before us including the challenge made in the amended petition.

6. The respondents dispute the contentions of the petitioner and contend that their action was reasonable and fair, based on binding government policy. According to the respondents, at the time of his retirement on 30th November, 1989, the petitioner was holding the rank of Lt. Colonel (Time Scale) having to his credit 25 years and 309 days (Twenty five years three hundred and nine

days) treated as 26 years of actual qualifying service for the purposes of computation of pension. A direction to this effect was contained in letter No. 1(S)/87(D)(Pension)/SCRS dated 30th October, 1987.

7. The respondents have explained the basis and purpose for the addition of weightage in years in qualifying service in their counter affidavit as well as additional affidavit filed on record. It is submitted that the Third Central Pay Commission recommended for addition of number of years to the standard service of all ranks. The Govt. of India during 1976 accepted the proposal and approved rank wise standard service and weightage as follows:-

Age of retirement	Standard length	Weightage	Total service	for of service pension
Lt. 50	20	9	29	

Capt. 50 20 9 29

Major 50 22 8 30

Lt. Col. T.S.) 51 26 5 31 Lt. Col.(S) 50 24 7 31

Col. 50 26 7 31

8. According to the respondents, the concept of Lt. Colonel (Time Scale) (abbreviated as 'TS') was introduced in the year 1958. At this point of time, officers of the rank of Lt. Colonel were prescribed to retire at the age of 48 years. Consequently, a Lt. Colonel (TS) was given one extra year in the age of superannuation and were given additional year of standard service vis. a vis four years more than the Major and two years more than Lt. Colonel (Selected) abbreviated as Lt. Colonel (S). Similarly, a Lt. Colonel (TS) was granted five years of weightage with 26 years of standard service totaling 31 years of qualifying service for the purposes of computation of pension. Against this, a Lt. Colonel (S) and a Major were granted 7 years and 8 years weightage with 24 and 22 years of standard length of service respectively. Therefore, the Lt. Colonel (S) and a Major were treated as having 31 and 30 years respectively of total service for the purposes of computation of length of service with pensionary benefits that were calculated.

9. The relevant portions of para 5 of the letter dated 30th October, 1987 read as hereunder:-

"5. Qualifying services

(a) The term 'Qualifying service' (QS) shall mean:-Category Pension Death-cum-Retirement Retiring/Service/ Gratuity Invalid/Terminal Gratuity Retirement Gratuity Death Gratuity Officers Actual qualifying Actual qualifying Actual qualifying service Actual service rendered by service plus a rendered plus a weightage qualifying the officer plus a weightage of 5 of 5 years subject to total service rendered. weightage (in yrs) years subject to the qualifying service not exc appropriate to the total qualifying ending 33 years. In case last rank held as service including actual service is less than indicated in (b) weightage not 5

years, no weightage shall below subject to the exceeding 33 years be given total qualifying service including weightage not exceeding 33 yrs.

(b) Weightage for the purpose of calculation of pension of Commissioned Officers will be as given below:-

(1) Service Officers (other than MNS)

Rank (ARMY) Rank (NAVY) Rank (AIR FORCE) Weightage in years

Subaltern 9 Captain 9 Major 8 Lt. Col. (TS) 5 Lt. Col (S) 7 Col. 7 Brig. 5 Maj. Gen. 3 Lt. Gen. 3 Lt. Gen. (Army 3 Commander/COAS) COAS 3 Note: (1) xxx xxx xxx xxx

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

(5) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service."

10. It is brought to our notice that since the Fourth Central Pay Commission's recommendations, the pensions of Lt. Colonel (TS) have been protected against pensions of Major so as to ensure that the Lt. Colonel (TS) does not draw pension at a rate less than what would have been obtained by him had he not been promoted from Major to Lt. Colonel (TS). It is submitted that an officer holding the rank of Lt. Colonel (TS) has never been at a loss as compared to either a Lt. Colonel or a Major.

11. The respondents placed reliance on para 3 of the Government of India letter which provided that the pension of the officers of the rank of Lt. Colonel (TS) shall not be less than pension which would have been admissible to him as a Major had he not been promoted to higher rank of Lt. Colonel (TS). Prior to 1st January, 1996, there was only one integrated scale of the rank of Second Lieutenant to Brigadier which was 2300-100-3900-150-5100.

12. Consequently, if the respondents allowed the weightage of five years to the petitioner in terms of para 5 of the letter dated 30th October, 1987, of the officer holding the rank of Lt. Colonel (TS) was entitled to weightage of five years only and as such his pension would fall below the pension payable to the Major who is entitled to weightage of eight years as per the said letter.

13. The respondents state that with the intention to provide protection of pension in terms of the Note below para 6.1 (b) in the case of the petitioner, his pension was worked out giving him the benefit of the weightage of eight years even though the weightage appropriately permissible was five years only. Upon addition of the eight years weightage to the qualifying service of 26 years to the credit of the petitioner, his total service came to 34 years which was restricted to

33 years and consequently he was allowed a full pension at the rate of Rs. 2,400/- with effect from 1st February, 1989 vide PPO No. M/CORR/50/90.

14. In order to appreciate the action taken by the respondents, it is necessary to consider the note appearing below para 6 of the letter dated 30th October, 1987 relied upon by the respondents which reads as under:-

"6. RETIRING/SERVING OFFICER

6.1 OFFICERS

(a) xxx xxx xxx xxx

(b) xxx xxx xxx xxx

Note: The retiring position of an officer of the rank of Lt. Col. (TS), Brigadier or Major General and equivalent, shall not be less than the pension which would have been admissible to him as a Major/Colonel or a Brigadier and equivalent as the case may be, had he not been promoted to the higher rank."

15. The computation made by the respondents based on the directive contained in the aforesaid communication of the Government of India cannot be faulted. The petitioner also appears to have been satisfied by the action of the respondents inas much as this fixation carried out in terms of the aforesaid directives has not been disputed before us.

16. In implementation of the Fifth Central Pay Commission recommendations, the Government of India issued a directive dated 7th June, 1999 directing revision of the pensionary awards. The relevant portion of the Government directive contained in the letter dated 7th June, 1999 is set out as hereunder:-

"2. The revision of pension/ordinary family pension shall be undertaken as follows:-

2.1 COMMISSIONED OFFICERS

Post and Pre-1.1.96 cases

(a) Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs. 1275/- p.m. and a maximum of up to 50% of the highest pay applicable to Armed Forces personnel but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced w.e.f. 1.1.96 for the rank last held by the Commissioned Officer at the time of his/her retirement. However, such pension shall be reduced pro-rata, where the pensioner has less than the maximum required service for full pension."

17. Therefore, under the provisions of the Government of India letter dated 7th June, 1999, calculations of the pension was to be effected on the basis of the last rank held by the officers and the pay scale introduced with effect from 1st January, 1996.

18. The respondents contend that there has been no change in the number of years in weightage as are admissible to a Lt. Colonel (TS) even after the implementation of the recommendations of the Fifth Central Pay Commission.

19. As already noticed hereinabove, prior to 1st January, 1996 there were only one integrated scale of pay set out hereinabove. However, separate pay scale has been provided for the purpose of Lt. Colonel (TS) with effect from 1st January, 1996. The permissible weightage as admissible to a Lt. Colonel (TS) even after implementation of the recommendations of the Fifth Central Pay Commission remained as five years. Consequently, the respondents effected computation of the pension in accordance with the applicable rule giving the benefit of five year weightage as was admissible to the petitioner who was holding the rank of Lt. Colonel (TS) upon the pay scale to which the Lt. Colonel (TS) was now entitled.

20. There is no challenge to the prescription by the Government of India or to the applicable policy for grant or computation of weightage in service in the petition before us. The petitioner has not been able to point out any illegality or any instance whereby the petitioner could successfully urge his plea of discrimination. The petitioner has also not submitted that the computation of his pension after the implementation of the Fifth Central Pay Commission was not in terms of the Government of India letter dated 30th October, 1987 as stated hereinabove. Consequently, we are unable to find anything in favor of the petitioner to the effect that any injustice was meted out to him in computation of his qualifying service for pension or that the petitioner has been discriminated against in any manner.

21. The petitioner has further contended that he has not been paid the correct war injury disability element pension on the recommendations of the Fifth Central Pay Commission. The petitioner has contended that these recommendations were circulated by the Ministry of Personnel, Public Grievances and Pensions vide circular No. 45/22/97-P and PW(C) dated 3rd February, 2000. According to the petitioner, the provisions of the circular were applicable to persons who retired both prior and subsequent to 1st January, 1996. According to the petitioner, it was mandatory for all authorities, including the respondents to implement the guidelines mentioned in this circular. According to the petitioner, whereas the respondents have complied with the requirement of para 5 (ii) of the circular dated 3rd February, 2000 with regard to permanent duration of the petitioner's disability and have issued a letter dated 21st July, 2002, however, the respondents have failed to round off the extent of disability in the case of the petitioner for the purposes of computation of disability pension. According to the petitioner, the circular dated 3rd February, 2000 required that persons having disability of less than 30% were entitled to weightage of 50% disability pension.

22. The question being agitated by the petitioner arose for consideration in writ petition (C) No. 5603/2002 entitled Col. B.S. Dhanda Vs. UOI and another wherein vide a judgment dated 1st of March, 2004 it was held hereunder:-

"xxx xxx xxx xxx

From the aforesaid provisions in para 6, it would be clear that as far as the rate of disability element is concerned that will be governed as per the rates indicated in para 7.1 of the notification dated 31st January, 2001. Para 7.1 (II) (a) deals with rate of disability element. Whereas para 7.2 deals with the percentage of disability. Pursuant to the provision made in para 6 of the notification, the percentage of disability has been excluded and, Therefore, pensioners who have retired before 1.1.1996 cannot claim, as a matter of right, for enhancement of percentage of disability.

Therefore, we do not find force in the arguments of the petitioner that in the case of petitioners who have retired prior to 1.1.1996 would be entitled for assessment of percentage of disability in terms of paragraph 7.2 of notification dated 31st January, 2001.

Therefore, in our considered opinion it cannot be said that in case of the revision of higher rates for disability pension for pensioners who have retired prior to 1.1.1996, the percentage of disability will also stand revised in terms of the notification issued on 31st January, 2001. The increase of percentage and rate has been done by issuance of specific notifications. The petitioner has not challenged non-grant of higher percentage of disability pension to pensioners who have retired on or before 1st January, 1996 on the ground of discrimination as those who were retiring after 1st January, 1996 have been granted a higher percentage of disability pension, although they have been assessed less than 50% of disability, Therefore, no writ can be issue on that count in favor of the petitioners.

xxx xxx xxx xxx

Net result of the discussion is that those pensioners who have retired prior to 1.1.1996 will be entitled to a higher rate of disability pension as envisaged and provided in notification dated 31st January, 2001. But their percentage of disability will not be enhanced to 50% as prayed for in this writ petition. However, they will be entitled to be paid on the basis of the disability assessed by the medical board."

23. The issues raised by the petitioner stands on all fours with the decision of the Division Bench in Col. B.S. Dhanda (Supra). After consideration of the circular as well as the material on record, we are unable to agree with the contentions of the petitioner. The circular dated 3rd February, 2000 relied upon by the petitioner is applicable only to civilian government servants and as such would not be applicable to the petitioner who is a retired army officer. The petitioner retired from service of 30th November, 1989. Reliance placed by the petitioner on the letter dated 31st January, 2001 is also misconceived inas much as the same applies to only officers who were in service on or after 1st January, 1996. We find that the disability element has been correctly fixed by the respondents at 30% in the case of the petitioner.

24. The petitioner is not entitled to any of the reliefs sought for.

25. For the foregoing reasons, we find no merit in the writ petition which is hereby dismissed.