(2011) 01 DEL CK 0140

In the Delhi High Court

Case No : Writ Petition (C) 5607 of 2010

M.C. Sharma APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 177 DLT 497 : (2011) 129 FLR 592 : (2011) 3 ILR Delhi 491 : (2012) 2 SLJ 258

Hon'ble Judges : Suresh Kait, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Alok Bhachawat, Syed Hasan Isfahani and Sankalp Kashyap, for the Appellant; Neeraj Choudhary and Mohit Auluck, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.

C.M. No. 479/2011

Allowed.

W.P.(C) 5607/2010

1. Heard learned Counsel for the parties.

2. After initially reckoning qualifying service, for purpose of pensionary benefits payable to the Petitioner as 27 years, 1 month and 16 days, the Respondents corrected themselves by treating qualifying service as 30 years, 5 months and 10 days.

3. It is not being disputed by the Respondents that full pension has to be paid to all those who have rendered 33 years'' qualifying service.

4. But the issue between the parties is that, as per the Petitioner since he superannuated while holding the post of Commandant i.e. on attaining the age of 55 years for purposes of full pension the qualifying service has to be reckoned as

30 years and not 33 years for which stand the Petitioner relies upon various decisions of this Court where view taken was that 33 years'' qualifying service for full pension has been premised on the ground that civil servants superannuate on attaining the age of 58 years and thus those who are made to superannuate earlier would be entitled to proportionate reduction in the number of years for calculating qualifying service. The Department does not agree.

5. We find that the issue at hand is squarely covered in favour of the Petitioner, commencing with the decision of the Supreme Court reported as Raghunandan Lal Choudhary and Ors. v. UOI AIR 1998 SC 2125 It has been followed consistently by this Court in a number of decisions, the latest reported decision being D.D. Swami v. UOI 2004 (II) AD (Delhi) 246

6. In D.D. Swami''s case (supra), a Commandant under BSF superannuated on attaining the age of 55 years i.e. the maximum age till which a person can hold the post of Commandant. He had rendered a little more than 30 years'' service, but not 33 years. He was granted pension on pro rata basis. This Court directed that he would be entitled to full pension with interest on the arrears calculated @9% per annum effected from the date when the amount fell due and payable till payment was made. The basis of the view is that 33 years'' qualifying service for pension is premised on the entitlement of civil servants to service till the age of 58 years and if the Government fixes a lower age when an employee would superannuate eg. 55 years for a Commandant, the span of qualifying service has to be lessened by such number of years as is the differential between 58 years and the lesser tenure.

7. Accordingly, we allow the writ petition and issue a mandamus to the Respondents to pay full pension to the Petitioner. Arrears would be paid within 8 weeks from today together with interest calculated @9% per annum from the date arrears have to be paid being the differential in the pension payable and pension paid each month.

8. We note that in-spite of categorical pronouncement on this issue by this Court and reiterated in over 8 judicial decisions, the Respondents are not taking any action to ensure that this issue is not recurring made the subject matter of litigation. Accordingly, we further direct the Respondents and, in particular, Respondent No. 1 to issue an office memorandum within 6 weeks from today notifying all paramilitary forces under the jurisdiction of Respondent No. 1 that pension of paramilitary officers needs to be computed in view of the law laid down by the Supreme Court in Raghunandan Choudhary''s case (supra) consistently followed by this Court, latest pronouncement on the issue being the present decision.

9. Petitioner is entitled to be paid costs in the sum of Rs. 11,000/- by the Respondents.