(2015) 05 DEL CK 0395

In the Delhi High Court

Case No : W.P.(C) 13812/2006

M.R. Tundwal APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Citation : (2015) 05 DEL CK 0395

Hon'ble Judges : Kailash Gambhir and I.S. Mehta, JJ.

Bench : Division Bench

Advocate : K.S. Chauhan, Ajit Kumar Ekka, Ravi Prakash, Murari Lal and Gyan Mitra, Advocates, for the Appellant; M.K. Bhardwaj, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—The petitioner has preferred the present writ petition under Articles 226 /227 of the Constitution of India against the impugned judgment and order dated 31.03.2006 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (herein after referred as learned Tribunal) in O.A. No. 1845 of 2005.

2. The brief facts stated in the present petition are that the petitioner was initially appointed as L.D.C w.e.f. 16.09.1965 with the Central Government Pay & Accounts Officer, Department of Supply, New Delhi. The petitioner has worked in various Central Government Departments/Offices during 16.09.1965 to 12.02.1987 including the lien period of two years i.e. from his parent department- Central Government to the Haryana State Public Sector Undertaking.

3. The petitioner was appointed as Incharge Training Officer, Ministry of Textile, Office of the Development Commissioner (Handicraft), Central Government, New Delhi from 25.01.1980, on which post, he had worked till he was relieved on 12.02.1985 vide office order No. 1(4-12)/85- Textile, issued by the said department i.e. Ministry of Textile. Thereafter, the petitioner was selected as

District Manager in the Haryana Harijan Kalyan Nigam Ltd., (now Haryana Schedule Caste Finance and Development Corporation Ltd.) Chandigarh, through Direct Recruitment selection process and was permanently absorbed in the same w.e.f. 13.02.1987.

4. It is an admitted fact that the petitioner has served the respondent No. 1 for a total period of more than twenty one years which entitles him to full pensionary benefits under the Central Civil Services (Pension) Rules, 1972. The petitioner had preferred an O.A. No. 1726 of 1990 seeking the grant of pro-rata retirement benefits which were not released in his favour after his retirement in the year 1987.

5. The petitioner had preferred another O.A. No. 1845 of 2005 for restoration of his 1/3rd portion of Commuted Pension w.e.f. 13.02.2002 and full Dearness Allowance as provided under the Rules with all consequential benefits. The learned Tribunal disposed of the aforementioned application of the petitioner vide order dated 31.03.2006 with direction to the respondents to make payment of petitioner''s pensionary benefits for the period from 13.02.1987 to 18.03.1995. Aggrieved by the said order dated 31.03.2006 the petitioner has preferred the present Writ Petition.

6. Dr. K.S. Chauhan, learned counsel for the petitioner submitted that the petitioner who had superannuated on 13.02.1987 was entitled to seek commutation of the pension counting the period of 15 years from the date of his retirement and not from the date when the pension was actually released to him after his necessary medical examination. The learned counsel also submits that the petitioner had filed an OA No. 1726/1990 wherein the petitioner sought the grant of pro-rata retirement benefits which were not released in his favour after his retirement in the year 1987.

7. The learned counsel further submitted that during the pendency of the aforesaid OA, a decision was taken by the respondents to grant the pro-rata retirement benefits to the petitioner and in the light of the said decision taken by the respondents, the same was disposed of by the learned Tribunal vide order dated 22.11.1994. The learned counsel also submitted that in the aforesaid order dated 22.11.1994 passed by the learned Tribunal, it was also observed that in any case if the applicant/petitioner is dissatisfied by the grant of pro-rata retirement benefits or if the same was not according to rules or according to the decision conveyed by the Department of Pension and Pensioners'' Welfare, it shall be open to the applicant/petitioner to assail his grievance according to law subject to the law of limitation.

8. The learned counsel for the petitioner further submitted that the second OA No. 1845/2005 was preferred by the petitioner for issuance of necessary direction to the respondents to restore 1/3rd portion of his commuted pension w.e.f. 13.02.2002 alongwith the grant of full Dearness Allowance (in short ''DA'') as per the applicable rules with all the consequential benefits. The petitioner had

also sought release of his pro-rata retirement benefits for the period 13.02.1987 to 18.03.1995.

9. The learned counsel further submitted that under the applicable rules, the pensioners are allowed an option of converting a portion of the pension into a lump sum amount and to have the commuted portion of the same restored on the expiry of 15 years from the date of retirement but the respondents instead of calculating the period of 15 years from his retirement had calculated the period of 15 years from the grant of payment of the said pension, which in the case of the petitioner was made in the year 1995. The learned counsel also submitted that the Office Memorandum dated 08.03.2006 which was issued by the respondents during the pendency of the said OA filed by the petitioner was based on a wrong premise stating that the entitlement of the petitioner for restoration of commutation of his pension could only be after the expiry of 15 years i.e. from 18.03.1995, the date of actual payment.

10. Concerning the issue for grant of DA, the learned counsel for the petitioner placed reliance on the judgment of the Apex Court in the case of P.V. Sundara Rajan and Another Vs. Union of India and Others, .

11. The petition is vehemently opposed by Mr. M.K. Bhardwaj, the learned counsel for the respondents. The learned counsel argued that the petitioner himself opted for 100% commutation of his pension on 23.08.1993, which was allowed and accordingly, the petitioner was paid 100% commutation of pension from 18.03.1995 onwards. The learned counsel further submitted that the period of 15 years thus has to be counted as per the applicable rules from the date when 100% commutation was paid and not from the date of retirement of the petitioner.

12. The learned counsel thus submitted that the learned Tribunal has rightly placed reliance on the Office Memorandum No. 4/26/2004- P & PW (D) (Voll. V) dated 08.03.2006, which is based on the OM No. 34/2/86-P & P.W.(G) dated 5th March, 1987 which clearly envisages that unless the commutation is simultaneous with the date of retirement, the period of 15 years shall be reckoned from the date of payment of pension. On the DA, the learned counsel submitted that in the case of re-employment of the petitioner, the employee is ineligible for DA, pension or family pension in terms of Rule 55A of the Central Civil Services (Classification, Conduct & Appeals) Rules, 1965.

13. We have heard the submissions made by learned counsel for the parties and have given our thoughtful consideration to the arguments advanced by them. We have also perused the material on record.

14. The petitioner, on being selected to Public Sector Undertaking, i.e., Office of the Development Commissioner (Handicraft), Ministry of Textile, Government of India, New Delhi, was working on the post of Incharge Training Officer, and retired from service w.e.f. February 13, 1987. The petitioner had filed an O.A. No. 1845/2005 before the learned Central Administrative Tribunal, Principal

Bench, New Delhi seeking following reliefs:--

"a) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ, directing the respondents to restore the 1/3 portion of Commuted Pension w.e.f. 13.2.2002 and full Dearness Allowance as provided under the Rules with all consequential benefits.

b) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ, directing the respondents to pay the balance of commutation factor between 13.25 to 15.40 to the humble applicant with all consequential benefits and with interest at the rate of 24% per annum from the date of pro-rata retiral benefits i.e. 13.2.1987, till the day of realization and provide all consequential benefits.

c) Pass an appropriate order, direction or writ in the nature of mandamus or any other appropriate writ directing the respondents to grant interest at the rate of 24% per annum on the delayed payment of pensionary benefits/arrears of pensions with all consequential benefits.

d) Pass such other further order or orders as this Hon''ble Tribunal may deem fit and proper in the facts and circumstances of this case and in the interest of justice."

15. The grievance raised by the petitioner before the learned Tribunal and before this Court is that he is entitled to restoration of one-third commuted pension on completion of 15 years from the date of his retirement and not from the date when 100% of commutation of pension was done. If this period is reckoned from the date of his retirement, then this period was completed on 13.02.2010. Another grievance which was raised by the petitioner was apropos his entitlement of dearness allowance on restoration of his full pension. The petitioner also claimed that his pension ought to have been calculated taking into account commutation factor of 15.40 which was available in the year 1987 when he retired from service, instead of 13.25, applicable on the date when he was medically examined.

16. During the pendency of the said Original Application i.e. OA No. 1845 of 2005, the respondents had passed an Office Memorandum dated 08.03.2006 wherein they had clarified that the petitioner will be entitled to restoration of commutation of pension only after the expiry of 15 years from 18.03.1995 which was the actual date of payment of pension, after commutation. The Office Memorandum further clarified that the petitioner would be entitled to full pensionary benefits for the period from 13.02.1987 to 18.03.1995 as the same, either in the form of pension or commutation of pension from the date of retirement was one of the benefits to which the petitioner was entitled.

17. Agreeing with the stand taken by the respondents, the learned Tribunal also found that the entitlement of the petitioner for restoration of his one-third pension is to be counted from the date of commutation of his pension and not

from the date of his retirement. In its reasoning the learned Tribunal derived strength from the Office Memorandum dated 22.08.1990 issued by the Govt. of India, Department of Pension & Pensioners'' Welfare wherein, the clarification was made by the Government that 15 years for restoration of pension is to be reckoned from the date of retirement itself only in those cases where the commutation of pension was/is ''simultaneous with retirement''.

18. In the background of the aforesaid reasoning, the learned Tribunal found no justification to agree with the case set up by the petitioner seeking restoration of commutation of pension on expiry of 15 years from the date of his retirement. As regards the other relief concerning his entitlement to full dearness allowance, the learned Tribunal held that the dearness allowance as per instructions will not be admissible to an employee on his re-employment on absorption in PSU/ autonomous body. The only relief to which the petitioner was held entitled to by the learned Tribunal was that the respondent should make payment of the pensionary benefits for the period from 13.02.1987 to 18.03.1995 and for implementation of the same, a period of 45 days time was granted to the respondent. Feeling aggrieved by the said decision of the learned Tribunal, the petitioner preferred the present Writ Petition.

19. The petitioner after he was permanently absorbed in the said PSU, had retired from service on February 13, 1987, and had opted for lump sum amount on account of pro-rata pension in lieu of monthly pension on 23.08.1993. As per Rule 6(ii) G.D. (i) of CCS (Commutation of Pension) Rules, 1981, the commutation of pension becomes absolute in the case of absorption on the date on which the medical authorities sign the medical report in prescribed proforma. The commuted value of pension is calculated taking into consideration the date of medical examination and the age on the next birth day after the date of his medical examination. In this case the petitioner had appeared before the Medical Board on 21.10.1994 and his next birth day had fallen on 09.09.1995.

20. Taking into consideration the applicable commutation factor of 13.25, the petitioner was paid a sum of Rs. 1,03,986/- on account of pro-rata pension in lieu of monthly pension and he became entitled to restoration of one-third portion of pension on 17.3.2010. With regard to this issue of reckoning of 15 years period either from the date of retirement or from the date of payment of commutation of pension, various clarifications were sought by the employees from Ministries/Departments and such points were clarified by the Government which form a part of the Appendix 1 of CCS (Commutation of Pension) Rules, 1981, the same are reproduced as under:--

"(4) Decisions/Clarifications regarding commutation of pension up to 40% and, reduction in pension and its restoration. - A number of communications have been received from various Ministries/Department/Pay & Accounts Offices seeking clarification regarding payment of commuted value of pension up to 40% in terms of this Department''s OM No. 45/86-97-P. & P.W. (A) - Part I, dated 27.10.1997 [Decision (4) below Rule 5]. The points raised are clarified below:

2. This issues with the concurrence of Ministry of Finance, Department of Expenditure vide their U.O. No. 351/EV/98, dated 29.6.1998.

[G.I., Dept. of Pension & P.W., O.M. No. 45/7/95-P & PW, (G) dated the 4th September, 1998.]"

21. This petitioner had never applied for commutation of his pension immediately after his retirement from the said PSU as no documentary evidence to this effect has been placed on record by the petitioner. The respondents in their communication dated 8th July, 2005 had called upon the petitioner to provide documentary proof in support of filing any application for commutation of his pension and the reasons, if any communicated by the respondents for not agreeing to such a request made by the petitioner. In response to this, the petitioner only wrote that he has already made available whatever documents were in his possession. Certainly the documents which were made available by the petitioner did not contain any application for commutation of pension. In this background, there is no difficulty in believing the stand taken by the respondents that petitioner had opted for 100% commutation of pension only on 23.08.1993 and accordingly he was paid the pension after commutation on 18.03.1995. The period of 15 years as per applicable Rules has to be counted not from the date of his retirement but from the date when he was paid the pension on commutation after his medical examination and also taking into account his date of birth after his medical examination.

22. Reliance may be placed on the judgment of the Apex Court in the case of Bharat Petroleum Corpn. Ltd. Ex-Employees Association and others Vs. Chairman and Managing Director, Bharat Petroleum Corpn. Ltd., Bombay and others, , wherein, the Hon''ble Supreme Court while placing reliance on the judgment in Common Cause, A Registered Society and Others Vs. Union of India (UOI), , held:

"In Common Cause v. Union of India (supra), this Court has observed that 15 years is a reasonable period after which the commuted portion of the pension could be restored. In arriving at this conclusion, this Court adopted the principle of years of purchase'' and observed that and addition of two years to the period necessary for the recovery on the basis of years of purchase justifies the adoption of the 15 year rule and that appeared to be equitable. We find no reason why the same principle should not apply to the petitioners who were originally employed with Burmah Shell and subsequently became the employees of the respondent-Corporation which is an undertaking of the Government of India and "State" within the meaning of Article 12 of the Constitution (See : Som Prakash Rekhi v. Union of India and Anr. . The equitable principle underlying the rule for restoration of the commuted portion of the pension after the expiry of the 15 years from the date of retirement which is applicable to the Central Government can equally be applied to the employees of the respondent-Corporation."

23. Thereafter, the Apex Court in its subsequent decision rendered in the case of R. Gandhi Vs. U.O.I. and Another, made the observation that the words "15 years from the date of retirement" in Common Cause (Supra) were construed as "15 years from the date of commutation of pension" by the Supreme Court in the case titled as Welfare Association of Absorbed Central Government Employees in Public Enterprises v. Union of India and ors, (1991) 2 SCC 265. The relevant portion of judgment rendered in R. Gandhi''s case (Supra) is reproduced herein under:

"...From this observation it can be noticed that the judgment in Common Cause (supra) was neither modified nor clarified. What all can be inferred is that this Court in Welfare Association''s case (supra) understood the words "on the expiry of 15 years from the period of retirement" in Common Cause (supra) as "15 years from the date of commutation....". The judgment in Welfare Association case (supra) was rendered on April 12, 1990. It is only pursuant to that judgment, the counter affidavit recites, the Government revised its earlier Office Memorandum dated March 5, 1987 and brought into force the impugned Office Memorandum dated August 22, 1990.

11. In Bharat Petroleum Corpn. Ltd. Ex-Employees Association and others Vs. Chairman and Managing Director, Bharat Petroleum Corpn. Ltd., Bombay and others, , this Court extended the benefit of the judgment in Common Cause (supra) to the clerical employees of Bharat Petroleum. There also the words "period of 15 years from the period of retirement" were understood as "15 years from the date of commutation."

24. Hence, in R. Gandhi v. Union of India, (Supra), the Hon''ble Supreme Court observed that the restoration of the commutation of pension after 15 years has to be counted from the date of the commutation and not from the date of the retirement.

25. In the light of these admitted and indisputable facts, we are not persuaded to take any view contrary to the view taken by the learned Tribunal and we also find that the period of 15 years in the case of the petitioner has to be reckoned from the date of payment of the pension on commutation and not from the date of his retirement.

26. With regard to the entitlement of dearness allowance to the petitioner on full pension no contention has been raised by learned counsel representing the petitioner to rebut the reasoning given by the learned Tribunal that as per the applicable instructions, the dearness allowance was inadmissible on re-employment on absorption in PSU/Autonomous Body.

27. For the entitlement of the petitioner for the grant of payment of pensionary benefits from the period of 13.02.1987 to 18.03.1995, the learned Tribunal had directed the respondents to complete the process within a period of 45 days from the date of receipt of the order dated 31.03.2006 and further directed the respondents to pay the pensionary benefits of the petitioner for the aforesaid

period within a period of two months from the date of the said order dated 31.03.2006.

28. We, however, direct that the said benefits shall be paid by the respondents to the petitioner alongwith interest @ 12% per annum on account of unjust and inordinate delay at their end.

29. With aforesaid directions, the present writ petition filed by the petitioner is disposed of with no order as to cost.

