

(2023) 05 DEL CK 0476

In the Delhi High Court

Case No : Civil Writ Petition No. 13401 Of 2018

Mukul Sanwal

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-05-2023

Acts Referred:

All India Service (Death-Cum-Retiral Benefits) Rules, 1958 — Rule 5(1)

Citation : (2023) 05 DEL CK 0476

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : Anubha Bhardwaj, Dev P. Bhardwaj

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

CM APPL. 22913/2023

1. This is an application filed by petitioner with the following prayers:

"(i) Modify the Order dated 07.02.2023 and pass appropriate directions setting aside the findings of Government of India, DOPT, in Order No.22012/04/2018-AIS-III dated 12.04.2023 (Annexure P 24) and

(ii) Issue directions to the Respondent to release the full amount of pension of Petitioner due under the rules from the date of foreign assignment (03.12.1993) with applicable interest."

2. Suffice to state, the writ petition was disposed of vide order dated February 14, 2019, whereby this Court has in para 26 stated as under:

"26. In the light of the aforesaid, we are inclined to direct the respondent to consider the petitioner's claim for grant of pension and even if the respondent does consider in its discretion, that the petitioner is not entitled to release of pensionary benefits, the respondent should consider whether he should be

granted compassionate allowance in terms of proviso to Rule 5(1) of the said rules. Since the petitioner raised the claim for grant of pension for the first time only in the year 2016, in case the respondent favourably considers his claim for grant, of pension, or compassionate allowance, he would be paid arrears of the same, for a period of three years prior to the date when he made his claim for the first time in the year 2016. The respondent should consider the claim of the petitioner in the light of the aforesaid discussion in the next eight weeks and communicate its reasoned order to the petitioner. The reasons disclosed should show that the competent authority has bestowed his consideration to the aspect of grant of pension to him and, if that claim is not granted, to the claim for grant of compassionate allowance. In case the petitioner is still aggrieved, it shall be open to him to take appropriate steps in accordance with law."

3. Pursuant thereto, the respondents had passed the order dated July 01, 2019, which became the subject matter of an application being CM APPL. No. 36087/2019. The said application was disposed of by this Court vide order dated February 07, 2023, wherein in paras 6 & 7 this Court had stated as under:

"6. We have heard the petitioner as well as Mr. Bhardwaj for sometime. We have perused the order passed by this Court on February 14, 2019 and the order passed by the respondent. Suffice to state para 18 of the order, which we have already reproduced above, is very clear inasmuch as the Court has said that Rule 5(1) of the All India Service (Death-Cum-Retiral Benefits) Rules does not mandatorily debar the grant of pension to the person who has been dismissed or removed from service, or who has resigned from the service. It also said that the word "may" in Rule 5(1) plainly shows that the pensionary benefits "may" be denied by the Government in its discretion. It is also said that the Government may, in the facts of the case under consideration, also decide not to deny the pensionary benefits to the concerned person. In the background of the findings and directions of the Court, it is clear that the last paragraph of the order dated July 01, 2019 (internal page 4), does not depict that the respondent has considered the case of the petitioner for grant of pensionary benefits in the manner directed by this Court. The competent authority has invoked the ground that resignation shall forfeit the past service to deny the pension. Such a ground is contrary to the conclusion in paras 18 and 20 of the order.

7. Accordingly, we are of the view with regard to the issue of grant of pension to the petitioner, the competent authority shall bestow his consideration afresh and keeping in view the mandate of the order of this Court dated February 14, 2019 and pass a fresh order within eight weeks from today."

4. Pursuant to our order dated February 07, 2023, the respondents have passed the order dated April 12, 2023, wherein they have not acceded to the request of the petitioner for grant of pension under Rule 5(1) of the AIS (DCRB) Rules, 1958.

5. Mr. Mukul Sanwal, the petitioner who appears in-person, submits that the

respondents even by passing order dated April 12, 2023, have reiterated the ground which was earlier taken by them in rejecting the pension.

6. We have seen the order dated April 12, 2023. The said order refers to certain relevant facts which appears to have weighed with the respondents not to accede to the request of the petitioner for grant of pension to him. Suffice to state, Mr. Sanwal contests the facts and states he is entitled to pension.

7. We say nothing on the same. As the order dated April 12, 2023, denying the pension to the petitioner is a fresh cause of action, appropriate shall be for the petitioner to approach the Central Administrative Tribunal impugning the same in accordance with law.

8. With the above observations, present application is closed.