
(2013) 02 DEL CK 0305

In the Delhi High Court

Case No : Writ Petition (C) No. 3439 of 2010

Narvir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) 2 ILR Delhi 1449

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : S.R. Kalkal, Col. Retd, for the Appellant; Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.

CM No. 18869/2012

By way of this application, the legal representatives of Cdr. Narvir Singh (Retd.) seek to be impleaded as petitioners as he has unfortunately expired on 16th September, 2012.

For the reasons stated in the application, the application is allowed.

WP (C) No. 3439/2010

1. By way of this writ petition, the petitioner assails the order dated 22nd March, 2010 passed by the Armed Forces Tribunal in O.A. no. 211/2009 rejecting the prayer of the petitioner for grant of pro-rata pension to him from the date of his discharge from the Indian Army and a direction to the respondents to release service pension under Regulation 23 of the Pension Regulations for the Navy. The case of the petitioner is that on 26th December, 1966 he was granted regular commission in the Indian Navy and he sought voluntary retirement as he claimed that he had been wrongly superseded for the next higher rank of Commander in the Navy. He was permitted to so retire on 31st March, 1983. The petitioner

claims that he was permanently absorbed in the Shipping Corporation of India Ltd. on 30th November, 1982, when he had served for 16 years, 65 days in the Indian Navy. The respondents contend that the petitioner had not joined the Shipping Corporation of India, the public sector undertaking, on deputation or otherwise with the consent of Naval authorities.

2. We find that this position was not disputed before the Armed Forces Tribunal. The petitioner does not challenge this position even in the writ petition or in the rejoinder which has been filed.

3. We may note that these communications and circulars were never placed before the Armed Forces Tribunal. Learned counsel for the petitioner also places reliance on a circular dated 20th January, 1979. Perusal of this document shows that this circular only provided criteria for pre-mature retirement/resignation of Defence Services Officers and does not contain the mention of grant of pro-rata pension. We may also note that the letter dated 20th January, 1979 or the policy letter dated 12th July, 1982 were not placed before the Armed Forces Tribunal by the petitioner.

4. So far as claim of the petitioner is concerned, Col. S.R. Kalkal, learned counsel for the petitioner has drawn our attention to the policy letter dated 12th July, 1982 which refers to orders issued by the Ministry of Finance read with memos of the Ministry of Defence to the effect that:

Officers who have been permitted to be absorbed in the Public Sector Undertakings on or after 8th November, 1968, are deemed to have retired from service from the date of such absorption and are eligible to draw the pay of the post in the Public Sector Enterprise in addition to pro-rata pension from the date of absorption, subject to fulfillment of the eligibility conditions for this purpose laid down in the orders issued by the BPE regarding the period of option etc. They are required under the relevant orders applicable to them to exercise option within 6 months of their absorption for either of the alternatives indicated below:-

(a) Receiving the monthly pension and death-cum retirement gratuity under the usual Government arrangement, or

(b) Receiving the DCR Gratuity and a lump-sum amount in lieu of pension worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable.

Where no option is exercised within the prescribed period the officer is automatically governed by alternative (b) above. A person opting for alternative (a) is entitled to commutation of a portion of pension as admissible in accordance with the existing orders.

(Emphasis supplied)

5. As noticed above, the instant case does not relate to an officer who has been permitted by the respondents to be absorbed in the public sector undertaking.

6. The respondents have placed reliance on a circular of the Government of India dated 19th February, 1987 which clarified the above noticed position in the following terms:

(i) while on deputation to Central Public Enterprises exercise an option for permanent absorption and are discharged/permitted to retire prematurely from Defence Services for this purpose.

(ii) are appointed in Central Public Enterprises on the basis of their own applications sent through proper channel in response to advertisements and are permitted to retire prematurely from service in the Defence Services for the purpose of taking up the appointment in the Enterprise.

7. We find that the Armed Forces Tribunal has found that the applicant was not entitled to pro-rata pension for the simple reason that the conditions mentioned in the circular dated 19th February, 1987 are not satisfied. Learned counsel for the petitioner has challenged the applicability of the letter dated 19th February, 1987 for the reason that the petitioner had voluntarily retired on 31st March, 1983. We find that given the clear policy enunciation in the prior policy letter dated 12th July, 1982 noticed hereto before, which is relied upon by the petitioner, the position does not change whether reference is made to policy letter dated 12th July, 1982. We find that the subsisting position has only been clarified by the letter dated 19th February, 1987.

8. We may note that petitioner has expired during the pendency of the writ petition on 16th September, 2012 and the present petition is being pursued by his legal heirs. In this background, we find no fault in the order passed by the Armed Forces Tribunal. The present writ petition has no merit and is dismissed.