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(2019) 10 DEL CK 0429

In the Delhi High Court

Case No : Civil Writ Petition No. 10903 Of 2019

N.K. Madhok APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Citation : (2019) 10 DEL CK 0429

Hon'ble Judges : G.S.Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Rajeshwari H., Anjana Gosain

Final Decision : Dismissed

Judgement

G.S. Sistani, J

C.M.45093/2019 (exemption)

1. Exemption is allowed subject to just exceptions.

2. Application stands disposed of.

W.P.(C) 10903/2019

3. The petitioner is aggrieved by order dated 06.12.2018 passed by the Central Administrative Tribunal ('Tribunal'), by which the prayer made by the petitioner for grant of interest from 02.10.2004 to 31.03.2015 has been declined; and pension for the period he had rendered service with National Airports Authority (NAA) with effect from 02.08.1989 to 30.11.2003 has also been denied.

4. The petitioner herein joined service on 02.04.1976 after qualifying in the UPSC exam held in the year 1975 and the services of the petitioner were placed at the disposal of the Ministry of Civil Aviation/Directorate General of Civil Aviation (DGCA). On 01.06.1986 the National Airports Authority was created as an autonomous body by an Act of Parliament and accordingly the operational wings of DGCA Headquarters were transferred to NAA; consequent whereupon the

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petitioner was also transferred to NAA on technical deputation with effect from 01.06.1986. The petitioner was given ad-hoc promotion by NAA, now the Airports Authority of India (AAI), on 30.06.1989. The petitioner was then absorbed on 02.10.1989 as Steno Grade 'B'. Hence the petitioner was no longer considered a Central Government employee from 02.10.1989.

5. In the year 1991-1992, the petitioner opted to commute 100% of his pension for his services rendered in DGCA and was accordingly paid his dues.

6. On 30.11.1993 the petitioner resigned from services after four years and two months and was consequently duly discharged from the post of Senior Personnel and Administration Officer. The petitioner claims that during his services, either with DGCA or with NAA, he was provided with free medical facility for himself and his dependent family members. However, upon his resignation these services were withdrawn for Government employees who had got their pension commuted, while employees who did not get their pension commuted continued to be provided with CGHS facility for free treatment for themselves and their dependent family members.

7. Subsequently, the Supreme Court in Welfare Association of Absorbed Central Government Employees in Public Enterprises and Others vs. Union of India and Another, (1996) 2 SCC 187 passed judgment on 15.12.1995 wherein it was held that absorbed employees are also entitled to the benefit of restoration of 1/3rd pension after expiry of 15 years from their retirement. Pursuant to the said judgment of the Supreme Court, an Office Memorandum was issued by the Central Government on 30.09.1996 whereby benefit of restoration of commuted pension was made applicable to all those Government employees who had been absorbed in Public Sector Undertakings/Autonomous or Statutory Bodies notwithstanding the fact that they had commuted their full pension earlier-on.

8. Admittedly, the petitioner submitted his representation to the DGCA on 17.11.2014 and his request was forwarded to the Airports Authority of India on 27.11.2014 as his service record was available with AAI. A calculation sheet was prepared by AAI for restoration of one-third pension on 31.12.2014 and DGCA ordered for payment of arrears to the petitioner on 09.04.2015, which it transpired were incorrect arrears. In supersession of its earlier order dated 09.04.2015, DGCA directed payment of corrected arrears of pension vide order dated 16.04.2015. Arrears having been paid to the petitioner on 20.04.2015, the petitioner now claims interest for the period of ten-and-a-half years for the delay in payment of arrears of pension, which was declined by the Tribunal. Ms.Rajeshwari H., counsel for the petitioner submits that the onus was on the respondent to grant pension to the petitioner after the judgment was pronounced by the Supreme Court in the year 1995 and the Office Memorandum was issued on 30.09.1996.

9. The other grievance of the petitioner is that the petitioner was not granted pension for services which he rendered at the NAA from 02.10.1989 to

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30.11.1993. Counsel for the petitioner relies on a notification dated 01.08.1988 in respect of her contention regarding ex-post facto sanction of pension for the period the petitioner served with the AAI.

10. On the other hand, Ms.Anjana Gosain, counsel for the respondents relies on the Office Memorandum dated 30.09.1996, more particularly on Clause 5, and submits that the onus was on the petitioner to apply. The petitioner applied in the year 2014-2015 and within five months pension was released to the petitioner; and thus, counsel for the respondents, no question of payment of interest would arise.

11. We have heard learned counsels for the parties and have considered their rival submissions.

12. The facts which we have narrated hereinabove are not in dispute. Clause 5 of the Office memorandum reads as under:

"5. All the concerned Central Government absorbees in a PSU/Autonomous Body etc. shall have to formally apply to the respective administrative Ministry/ Department/Office from where they had retired and were paid lumpsum commuted value of pension for the purpose of getting benefit of this O.M."

13. Reading of clause 5 leaves no room for doubt that for the purpose of receiving benefit of the O.M. the onus was on the petitioner to formally apply to the Administrative Ministry/Department/Office from where he had retired and was paid lumpsum commuted value of pension. Since undisputed facts show that once the application was made, the amount of pension due was released to the petitioner within five-and-a-half months. Accordingly, we find no infirmity in the decision taken by the Tribunal on this issue.

14. As far as the second grievance of the petitioner is concerned, the Tribunal has also taken note of the fact that the petitioner resigned from the NAA on 30.11.1993; and during the period between 2.10.1989 to 30.11.1993 there was no scheme for grant of pension; and further that the AAI was formed on 01.04.1995 as an autonomous authority under the Airports Authority of India Act, 1994 and the pension scheme was started only from 01.1.2006. Accordingly, notification dated 01.08.1988 does not apply to the facts of the present case. The prayer of the petitioner for compensation of Rs.20 lakhs towards medical claim has also been rightly rejected by the Tribunal for the reason that under the AAI rules medical reimbursement is not available upon resignation.

15. In the above view of the matter, we find no ground to interfere with the impugned order dated 06.12.2018 passed by the Tribunal. Accordingly, the writ petition is dismissed.

C.M.45094/2019 (add.documents)

16. In view of the order passed in the writ petition, the application also stands disposed of.

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