

(2012) 09 GUJ CK 0057

In the Gujarat High Court

Case No : Special Civil Application No. 10333 of 2011

O.P. Khurana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Citation : (2012) 09 GUJ CK 0057

Hon'ble Judges : G.B. Shah, J;D.H. Waghela, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G.B. Shah

1. This petition has been filed against the judgment and order dated 6.5.2011 passed by the Central Administrative Tribunal, Ahmedabad in O.A. No. 364/2008. The petitioner-party-in-person was serving with the railway administration for about thirty five years in various capacities. He had given an application dated 1.1.1996 for voluntary retirement with effect from 31.01.1996 with a request that the period of two months should be waived as the petitioner wanted to enroll himself with the Bar Council of India w.e.f. 1.4.1996. The pay of the petitioner was revised w.e.f. 30.7.1993 by order dated 7.2.1996 and before implementation, the said order was modified by another order dated 22.2.1996. The petitioner had no grievance with the modification by the order dated 22.2.1996 at the first instance. Thereafter he has made representation raising grievances against the said modification dated 22.2.1996 after taking voluntary retirement from service w.e.f. 31.5.1996 alleging that incorrect pay fixation has been done. On rejection his representation by the department, he filed O.A. No. 162/2006 after a lapse of 10 years suppressing the fact of the modified order dated 22.2.1996 and stating that because of such modification, his pension was granted at a lower rate and that he is continuing to get pension at a lower rate every month. He had not filed any application for condonation of the delay of 10 years in filing the O.A. The Central Administrative Tribunal (for short, "the

Tribunal") had given findings that the applicant had failed to point out as to how the earlier pay fixation order dated 7.2.1996 was just and as to how the modified order dated 22.2.1996 was unjust. The grievance of the petitioner was that he was to get benefit at the rate of 10.78 instead of 10.46 as per the commutation table given by the Tribunal at page 54 of its order. The Railways, in their reply, have disclosed that incorrect pay fixation was corrected and modified by order dated 22.2.1996 to which the present petitioner has not resisted the stand of the department by filing rejoinder etc. Thus the Tribunal, while rejecting the O.A., directed the Railways to look to the grievances of the petitioner, if he represents his case within 15 days and if such grievances are supported by and statutory provisions. However, the petitioner, without making representation within the stipulated period, filed review application before the Tribunal stating that the conclusion reached by the Tribunal is incorrect. The Tribunal has disposed of the said application and again liberty was given to represent his case by end of July 2007 and if such representation is made by the end of July 2007, the respondents was directed to give due consideration of the matter by October, 2007. The petitioner has given representations dated 24.7.2007 and 27.7.2007 pursuant to the directions of the Tribunal, wherein along with other grievances, he has stated that after attaining the age of 57 years his pension was required to be calculated taking into consideration the age factor @ Rs. 10.78 but he was paid only @ Rs. 10.46 as if he had completed the age of 58 years and thus caused undue loss in the commuted value of pension and requested that the difference due may be released. He also made allegation that the officer verifying the rejoinder dated 20.11.2006 in OA No. 162/2006 has attempted to misguide the Tribunal by making false statement and supplying irrelevant documents and fabricating the letter dated 20.1.2006 in back date as it was neither communicated to him nor any proof of delivery of the said letter was produced. The Railways, vide letter dated 28.11.2007 given its parawise reply/stand. As regards commutation, it is said that the application was given by the petitioner after completing the age of 58 years i.e. on 8.7.1996 and that the fixation was done correctly at the rate of Rs. 10.46. That since after completion of the age of 58 years he had applied and therefore, he could not claim benefit of commutation at the age of 57 years at the rate of Rs. 10.78 and therefore nothing is wrong in the calculation of commutation benefit. With regard to the allegation of misguiding the Tribunal, it is clarified in para 4 of the Railway's letter that they have put forth the factual position by filing sur-rejoinder along with R-4 to R-6. It was further stated that the petitioner has received R-5 i.e. letter dated 20.1.2006 by which he was asked to submit xerox copies of pass book but he failed to do so. The representation of the petitioner was thus rejected by the respondent-Railways.

2. The petitioner challenged the above communication dated 28.11.2007 of the respondent-Railways. The Tribunal had observed that after giving notice for voluntary retirement on 1.1.1996 the petitioner himself decided to resume duty on 23.4.1996 and continued working till 15.5.1996. His pay has been correctly

fixed w.e.f. 30.7.1993. The respondents have considered the representation dated 24.7.2007 in accordance with the directions of the Tribunal in OA No. 162 of 2006. The petitioner had made two grievances before the Tribunal. One was relating to the calculation of commuted value of pension and the other was relating to the alleged mistake of not taking into consideration 100% DA for calculation. As the grievance regarding pay fixation stood rejected by the Tribunal, it dealt with the other grievances. On the issue of calculation of commuted value of pension, the petitioner submitted application for commutation on 8.7.1996 and therefore on the date of application he had already completed 58 years of age as his date of birth is 17.6.1938. It is observed by the Tribunal that since the date of the application submitted by the petitioner is not legible, from the record of the O.A., it is found that the date was 8.7.1996 and therefore, he had completed the age of 58 years on 17.6.1996 when he submitted the application and thus the multiplication factor to be applied in his case was Rs. 10.46 as done by the respondents. It is further observed that on original fixation of pay as on 1.1.1996, no DA was admissible on the new pay as on 1.1.1996. The petitioner has not produced any evidence to establish that any DA was admissible on the newly fixed basic pay of Rs. 8250/-. Accordingly the O.A. was dismissed by order dated 6.5.2011. This order is challenged in this petition praying to quash and set aside the order of the Tribunal. The appellant also prayed for giving direction to respondent No. 1 to recast the retirement benefits and pay him all the dues with interest @ 15%.

3. We have heard the party-in-person. We have perused the orders passed by the Tribunal which is impugned in this petition. In his written submissions, the petitioner has reiterated his grievance on Annexure "W" page No. 79 which is the application for communication of pension without medical examination. He has submitted that the said form is incomplete and though the date is manipulated from 1.4.1996 to 8.7.1996, (overwritten) and that it is clear that process of commutation of pension had started in May 1996 and ended on 31.5.1996. His second submission was that his representation dated 24.7.2011 is decided by incompetent authority. Lastly the petitioner has categorically stated that he restricts his prayer only to the loss caused in commuted value of pension by manipulating the date of application.

4. We have carefully perused the order dated 6.5.2011 passed by the Tribunal in O.A. No. 364/2008. We have also perused Annexure "W" at page No. 79, the application form for communication of pension without medical examination in light of the above submissions made by the appellant. The main grievance of the appellant, party-in-person is that the said form at page No. 79 is incomplete and the date is manipulated from 1.4.1996 to 8.7.1996 by way of overwriting and as such the said process of commutation of pension had started in the month of May 1996 and ended on 31.5.1996. It is pertinent to note that so far as the document Annexure "W" page No. 79 referred above is concerned, as the date of the said application was not found legible in the copy available in the O.A., the Tribunal had called for original record and perused the Original Application filed

by the appellant. It was seen and found by the Tribunal from the Original Application that the said application at page No. 79 was submitted on 8.7.1996. Thus it is clear that the Tribunal had gathered subjective satisfaction by verifying the original document and in our view the appellant cannot agitate the same issue before this court as this court cannot sit in appeal over those findings which was arrived at by physical verification. Thus, it is clear that the appellant had completed age of 58 years on 17.6.1996 when he submitted the application at page 79 and the factum of 10.46 x 12 was applied in the case of the appellant. The total of value described and reproduced by the Tribunal in paragraph 8 of its order dated 6.5.2011 reads as under:

TABLE COMMUTATION VALUES FOR A PENSION OF Rs. 1 PER ANNUM Effective from 1st March 1971 (See Rules 8, 267. 28 (5) and 29(1) and 29(2))

It is seen from the above table that as on the date of application i.e. 8.7.96, the applicant's age at next birthday is 59 years since he has completed 58 years on 17.8.1996. Therefore the respondents have correctly used the factum of 10.46. The contention of the applicant therefore that he should be paid commutation on the basis of the factor of 10.78 is rejected.

In the facts and for the reasons discussed hereinabove, learned Tribunal had rightly taken the above view. We do not find any illegality or infirmity in the order dated 6.5.2011 passed by the Tribunal and we find ourselves in agreement with the same. For the aforesaid reasons, Special Civil Application No. 10333 of 2011 is dismissed at the admission stage.