
(1981) 12 DEL CK 0009

In the Delhi High Court

Case No : Civil Writ Appeal No. 2253 of 1981

O.P. Vohra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-12-1981

Acts Referred:

Citation : (1982) 3 DRJ 289 : (1982) RLR 635

Hon'ble Judges : J.D. Jain, J;D.K. Kapur, J

Bench : Division Bench

Advocate : M.D. Goyal and C.K. Mahajan, for the Appellant;

Judgement

D.K. Kapur, J.

(1) A show cause notice was issued to the respondents to which a reply was filed. On 4th November, 1981, we directed that the pleadings should be completed and the counsel also agreed that the petition should be decided, if possible) at the adjourned hearing, particularly as it was a pension case. This is how we come to hear this petition.

(2) We issue rule D.B., and proceed now to decide the petition under Article 226 of the Constitution.

(3) The petitioner joined the Customs and Central Excise Service as an Inspector and later became a Superintendent. He was transferred as Excise Officer on deputation to M/s. Heavy Electricals (India) Ltd., Bhopal, now known as M/s. Bharat Heavy Electricals Ltd. While serving at Bhopal on deputation, the petitioner was drawing his salary and a Deputation (Duty) Allowance calculated at 20% of his basic pay. After three years of service at Bhopal, he was permanently transferred to M/s Bharat Heavy Electricals Ltd., and was deemed to have retired from Government service on 6th July, 1976. At that stage, the petitioner became entitled to pro-rata pension and death-cum-retirement gratuity as payable under the Central Civil Services (Pension) Rules, 1972.

(4) The pension was initially calculated at Rs. 396.00 per month, but the petitioner claimed that the computation was defective in as much as the emoluments he was drawing consisted of his basic pay and his special pay, being the Deputation (Duty) Allowance he was drawing. This representation was made on 9th March) 1979. The petitioner's claim was accepted and a Revised Pension Payment Order was received by him which sanctioned a pension of Rs. 475.00 per month. The order also stated that Rs. 320.00 per month would be the family pension payable to Shrimati Shanti Devi in Case

(5) The petitioner was apparently aggrieved on account of certain deductions made from the actual payment received by him amounting to Rs. 2,304.00 made towards certain payments allegedly due from him. These representation resulted in the restoration of the deduction, but the pension was reduced to Rs. 396.00 per month. The petitioner being aggrieved by this order refiling his pension at Rs. 396.00 per month in place of the revised pension of Rs. 475.00 instituted this petition.

(6) In the counter-affidavit filed on behalf of the respondents, it was claimed that there had been a mistake in the fixation of pension at Rs. 475.00 which was detected and accordingly the pension was refixed at Rs. 396.00 .

(7) We are concerned in this petition with the correctness of the rival contentions.

(8) Learned counsel for the petitioner urges-(a) that the pension should be Rs. 475.00 and not Rs. 396.00 monthly, and also urges that even if the pension has been wrongly fixed at Rs. 475.00 it cannot be revised to the disadvantage of the petitioner.

(9) As both these points are of some importance to pensioners generally, we think that some analysis of the same is necessary.

(10) The first point is what is the correct pension of the petitioner in the circumstances of this case. It was urged that the pay being received by the petitioner at the time he was absorbed in M/S. Bharat Heavy Electricals Ltd., has to be determined with reference to Fundamental Rule 9(21) which defines "pay" to mean the pay plus special pay, personal pay and any other emoluments which may be classified pay by the President. Then reference was invited to Fundamental Rule 9(25) which defines "special pay" as an addition in the nature of pay in the emoluments of a Government servant granted in consideration of the specially arduous nature of the duties or some specific work of responsibility and includes non-practicing allowances payable to doctors in lieu of private practice. It was urged that deputation (duty) allowance was "special pay". For this purpose, reference was made to Appendix 5 of Swamy's Compilation of Fundamental and Supplementary Rules which made reference to a Memorandum dated 7th November, 1975, which laid down that Deputation (Duty) Allowance would be deemed to be special pay. Thus, urges learned counsel, this Memorandum declares the allowance to be special pay, and hence, the pay of the petitioner consisted of his basic pay which was Rs. 960.00 and the Deputation

(Duty) Allowance which was Rs. 192.00 . This sum of Rs. 192.00 was not taken into consideration when Rs. 396.00 was fixed as the pension and accordingly there had been a proper up-wards revision of the pension to Rs. 475.00 based on a proper computation of the emoluments of the petitioner.

(11) This contention was refuted by learned counsel for the State on the footing that emoluments were defined differently under the Pension Rules. There the definition is that emoluments mean pay as defined in Rule 9(21). If we take this definition by itself, then the petitioner's contention is correct. However, the petitioner was serving on deputation with M/s. Bharat Heavy Electricals Ltd., and not in a Government post at the time he retired. For 391 this purpose. Note 7 appearing below Rule 33 has to be referred to. This Note is in the following terms :- "Note 7. Pay drawn by a Government servant while on foreign service shall not be treated as emoluments, but the pay which he would have drawn under the Government had he not been on foreign service shall alone be treated as emoluments." As the petitioner was indeed on foreign service in the sense that he was serving with M/s. Bharat Heavy Electricals Ltd., which cannot be described as Government service within the meaning of the Rules, this Rule would have full application. What then would be the emoluments of the petitioner? If we assume that the petitioner was not on deputation with M/s. Bharat Heavy Electricals Ltd., then he would not have drawn Deputation (Duty) Allowance and accordingly he would have only got his basic pay. This leads to the result that the proper pension was Rs. 396.00 , and Therefore, there had been an error in revising his pension from Rs. 396.00 to Rs. 475.00 . We would agree with learned counsel for the State on this point.

(12) Turning now to the second point which is revision of pension after sanction, the Rule to be referred to, is Rule 61 of the Central Civil Services Pension Rules. This Rule is in the following terms :- "61. Revision of pension after sanction. (1) Subject to the provisions of Rules 8 and 9, pension once sanctioned after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary, on account of a clerical error, subsequently : Provided that no revision of pension to the disadvantage of the pensioner shall be "ordered by the pension sanctioning authority without the sanction of the Ministry of Finance if the clerical error is detected after a period of two years from the date of sanction of pension. (2) For the purposes of sub-rule (1), the Government servant concerned shall be served with a notice by the pension sanctioning authority, requiring him to refund the excess payments of pensions within a period of two months from the date of receipt of notice by him. (3) In case the Government servant fails to comply with the notice, the pension sanctioning authority shall, by order in writing, direct that such excess payment shall be adjusted by short payments of pension in future, in one or more Installments, as the said authority may direct " It will be seen that once the pension has been finally determined, then there can be no revision to the disadvantage of the Government servant unless it is on account of a clerical error or on account of the matters mentioned in 392 Rules 8 and 9. Rule 8 states that

the pension is subject to future good conduct and Rule 9 is the reservation of the right of the President to withhold pension on certain grounds. It is the common case that neither of these Rules has any application ; nor is it a case where there has been a clerical error. So, apparently this rule comes to the aid of the petitioner.

(13) It was urged by learned counsel for the State that this Rule could not be availed of by the petitioner because he himself had got the finally determined pension of Rs. 396.00 revised to Rs. 475.00 by his representation and accordingly the Rule did not operate in favor of the petitioner. Though, this is an attractive argument, it does not have any real merit. The Rule is to the effect that the finally determined pension cannot be revised to the disadvantage of a Government servant, the earlier determined pension would have been final if it had not been revised, but it was revised to Rs. 475.00 on the representation of the petitioner. The result would be that the revised pension would be the finally determined pension. That pension, even if wrongly determined, could not be revised except to the extent permissible under the Rule. We would accordingly reject the contention of the respondents and hold that the finally determined pension of Rs 475.00 could not be revised to the disadvantage of the Government servant.

(14) The Rule, (Rule 61) as we read it, means that the pension can be revised upwards, i.e., to the advantage of the Government servant, but not to his disadvantage. If it is raised, even by error, to the advantage of a Government servant it cannot be lowered back on the detection of an error except if it is a clerical error.

(15) In the circumstances, we have to allow the Writ Petition in favor of the petitioner. We have to hold that he is entitled to get a pension of Rs. 475.00 per month even though it may be more than what he would be entitled to get on a proper application of the Rules, we would hold thus, because the pension cannot be revised to the disadvantage of the petitioner.

(16) Keeping in view the reasons for which we have granted the relief, we think it would be fair to leave the parties to bear their own costs.