(2015) 03 DEL CK 0312

In the Delhi High Court

Case No : Writ Petition (C) 6127 of 2014

P.S. Pathrudu APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 03 DEL CK 0312

Hon'ble Judges : Kailash Gambhir, J;I.S. Mehta, J

Bench : Division Bench

Advocate : Yashpal Rangi, for the Appellant; Anurag Ahluwalia, CGSC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this petition filed under Articles 226 and 227 of the constitution of India, the petitioner seeks to challenge the order dated 27.05.2014 passed by the learned Tribunal in O.A. No.415/2012.

2. Assailing the legality and correctness of the impugned order, Mr. Yashpal Rangi, counsel representing the petitioner submits that the learned Tribunal has not properly appreciated the law laid down by the Apex Court in the case of K. Gopinathan Vs. Union of India (UOI), (1992) 2 SCALE 912 : (1992) 4 SCC 701 , which clearly states that the basic pay of an employee which was drawn earlier cannot be reduced on absorption under any circumstance. Contention raised by counsel for the petitioner is that the basic pay of the petitioner while he was on deputation was Rs.5,640/- which was reduced to Rs.4,750/- on his absorption. Counsel further argued that the learned Tribunal has also not appreciated the fact that O.M. dated 18.06.2001 is very much applicable to the facts of the present petition and even the earlier O.M. dated 19.07.1983 of 1983 protects the interest of the petitioner in so far as fixation of his pay was concerned. Counsel also argued that the learned Tribunal failed to appreciate that the undertaking given by the petitioner at the time of his absorption cannot defeat the legitimate

right of the petitioner to seek enforcement of his right for the protection of his basic pay in terms of both the said Office Memorandums, i.e. of 1983 and 2001 and if any undertaking taken by the respondents was against the letter and spirit of the said two OMs, the same cannot be held as binding on the petitioner.

3. Opposing the present petition and the arguments of the counsel for the petitioner, Mr. Anurag Ahluwalia, Standing Counsel appearing for the respondents submits that the undertaking given by the petitioner was in consonance with the OMs of 1983 and 2001 and the OM of 1983 only deals with the subject matter which is of pay fixation. Counsel also argued that the OM of 2001 does not deal with the subject matter of pay fixation and, therefore, the same is not applicable to the controversy in hand as already held by the learned Tribunal. Counsel further submits that insofar as the judgment of the Apex Court in the case of K.Gopinathan''s case (Supra) is concerned, the learned Tribunal has rightly held that this judgment is not applicable in the present case as in the present case there is a delegated legislation in the shape of OM of 1983 which holds the field whereas there was no such delegated legislation issued in that case. Counsel thus submits that the Tribunal has rightly distinguished the judgment of the Apex Court insofar as the facts of the present case are concerned. Counsel also argued that in terms of OM of 1983, the respondents have given the comparative chart which has been reproduced in the impugned order and which would clearly show that the petitioner was granted the personal pay i.e. Rs.1092/-, which was the difference of total pay, which the petitioner was earlier drawing with the basic pay of Rs.8385 and in terms of OM of 1983 the said difference of pay was to be protected by granting him personal pay to be absorbed in future increase of pay. Counsel thus submits that the petitioner was quite conscious of the said benefits which were available to him on his absorption and due to this reason he had given his undertaking.

4. We have heard learned counsel for the parties at considerable length and give our thoughtful consideration to the arguments advanced by them. We have also gone through the impugned order passed by learned Tribunal and the material placed on record.

5. In the present writ petition the contentions raised by the petitioner are mere reiteration of the pleas raised by him before the learned Tribunal and on perusal of the order passed by the learned Tribunal, we find that every contention raised by the petitioner has been convincingly dealt with by the learned Tribunal on complete analysis of the factual and legal position and there appears to be no room left for interference by this Court. Counsel representing the petitioner has neither brought any new ground to lay challenge to the order of the learned Tribunal nor could succeed in pointing out as to how and in what manner the reasoning given by the learned Tribunal is illegal, irrational or perverse. Based on the pleadings of the parties, the learned Tribunal had formulated following questions for its final adjudication, the same are reproduced hereunder:-

i. What is the structural difference between deputation and absorption? Do they differ in their scope and orientation?

ii. What is the difference in the scope of Circular of 1983 and RTI information in reference to the case under deputation?

iii. Whether there is any statutory provision that pay being drawn by the deputationist at the time of absorption and the gains of his previous service shall be protected at the time of his absorption?

iv. Whether the applicant needed to have assailed the Circular of 1983 in order to get relief that he has desired in the instant OA?

v. Whether the undertaking given by the applicant at the time of his absorption accepting the pay has been reduced to a nullity by the pronouncement in the case of Rajasthan Public Service Commission, Ajmer versus Dr. (Mrs.) Damyanti Dadich and Others decided by the Division Bench of Jaipur Bench of the Hon''ble High Court of Rajasthan on 03.08.1992.

vi. What relief, if any, can be granted to the applicant in consideration of the answers to the questions, framed above?

6. On the close scrutiny of the Impugned Order, we find that the finding of the Tribunal on all the aforesaid points does not call for any interference. The Tribunal is correct in observing that there is a perceptible difference between the terms of ''deputation'' and ''absorption'' and both are not interchangeable expression. Taking help of the judgment of the case of State of Mysore Vs. M.H. Bellary, AIR 1965 SC 868 : (1966) 1 LLJ 50 : (1964) 7 SCR 471 , wherein the Apex Court has distinguished between the terms ''deputation'' and ''absorption'', the Tribunal took a view that the deputation is an extension of service in the parent department with another host organization and the employee on deputation continues to get the service benefits including upgradation and promotion as and when they are provided to an employee, immediate junior to him, in operation of the next below rule. When he reverts to his cadre he would be placed above the employee junior to him and would be entitled to the benefits which the latter have availed from the said date. Whereas in the case of ''absorption'' the service rendered by the employee in his parent department comes to a stage of termination. It further held that on absorption, the pay scales, service conditions, other benefits may not necessarily be the same at par with the benefits drawn by such employee in his parent department and the same can be different. It also held that absorption cannot be forced but in terms of FR 110(a) no Government servant may be transferred to foreign services against his will, however this does not preclude his transfer to service or body which is wholly or substantially controlled by the Government and hence it is a deliberate choice provided to the Government servant. Another distinction which was pointed out was that in deputation the Government employee continues to hold permanent lien of his service in the parent department, while in the case of absorption his permanent lien is terminated and it is no longer at the option of absorbed employee to revert to his parent department. After spelling out the

distinctive features of both the said terms, the learned Tribunal held that it can be inferred that the deputation is a continuous service in the parent department, whereas absorption is a rebirth in new service.

7. On Issue No. 2, learned Tribunal has rightly held that the subject of pay fixation of State Police Officer on deputation to the Intelligence Bureau and on their permanent absorption in Intelligence Bureau is governed by the OM dated 19.7.1983 issued by the Government of India. This OM, inter alia, provides as under:-

"In supersession of this Ministry''s letter No. 2/Est(C) 74(1) -III/FP.V dated 22.06.1979 on the subject, I am directed to convey the sanction of the President to the adoption of the Formula of pay fixation as contained in the Ministry of Finance O.M. No. F.1(11) -III(B) /69 dated 20.1.70 as amended from time to time for fixation of pay of the deputationist State Police Officers on their permanent absorption in the Intelligence Bureau in the rank of JIO-II, JIO-I, ACIO-II, ACIO-I and DCIO subject to the notification given below:-

(i) In case the pay in the central scale so determined plus special pay (if any) is more than the pay plus deputation allowance plus special pay admissible as deputationist in the grade in which he is permanently absorbed, his pay in that grade will be fixed at such a stage that the pay plus special pay admissible, if any, does not exceed the total of pay plus deputation allowance plus special pay admissible to him as deputationist in the grade in which he is permanently absorbed.

(ii) If, on the date of permanent absorption, the total of the pay plus deputation allowance plus special pay plus dearness allowance plus interim relief if any drawn at the State rates by deputationist exceeds the total of pay plus special pay, if any, plus dearness allowances at central rates, the difference shall be allowed as personal pay to be absorbed in future increment.

(iii) If the deputationist is officiating in a grade higher than the one in which he is permanently absorbed in the IB, his pay in the officiating grade will be fixed in the Central Scale under the normal rules on the date of the permanent absorption. If, however, the total of the pay plus deputation allowance plus special pay drawn as deputationist on the date of permanent absorption in the officiating grade is more than the total of the pay plus special pay, if any, admissible in the central pay scale attached to the post in which the officer is officiating the difference will be protected by granting him personal pay to be absorbed in future increase of pay.

2. The revised formula will come into effect from 22.6.1979. This will be applicable to persons who are permanently absorbed w.e.f. the date or after the date of coming into force of the formula.

3. I am also to say that with effect from 1.1.73, the formula of pay fixation on permanent absorption as contained in this Ministry''s letter No. 7/43/62-P.III

dated 24.7.62 as amended from time to time will be modified to the extent that personal pay should be granted only to the extent the pay plus dearness allowance (including interim relief, dearness pay and additional dearness allowance) at state rates plus special pay plus 50% deputation allowance is more than the total pay plus special pay, if any, plus dearness allowance (including additional dearness allowance) at the central scale.

4. Past causes, decided in terms of this Ministry''s letter No. 7/43/62-P.III dated 24.7.62 as amended from time to time and modified w.e.f. 1.1.73 vide para 3 above, will normally not be re-opened. However, individual cases of hardship where an officer is likely to suffer in pensionary benefits as a result of the fall in basic pay on permanent absorption, will be taken up with the pay unit of the Department of Personnel/Ministry of Finance for consideration on merits so as to avoid any loss to the individual in the grant of pensionary benefits.

8. It has not been disputed by the learned counsel for the petitioner that the pay of the petitioner on his absorption was fixed in terms of the aforesaid OM. The grievance raised by the petitioner is that OM dated 18.6.2001 issued by the Government of India will come to the rescue of the petitioner for the protection of pay which he was drawing in his parent department. It is also the plea of the petitioner that basic pay of the employee cannot be reduced in any circumstances and in the case of the petitioner, the same has been reduced from Rs.5640 to Rs.4750 on his absorption which is impermissible in law. It is also the stand of the petitioner that clause 4 of the OM dated 19.7.1983 also protect the basic pay of the petitioner which he was drawing in his parent department before his absorption. The comparative position of pay scale of the petitioner before and after absorption as has been referred in the impugned order is reproduced as under:-

9. The eventuality which could fall out of the absorption of such an employee with regard to his basic pay, deputation allowance, etc. were taken care of in the said OM dated 19.7.1983. It envisaged that where the pay fixed on absorption is less than the pay + deputation allowance plus special pay + dearness allowance + interim relief drawn at the central rates, the difference shall be made up by granting personal pay to the absorbed employee. The Tribunal is correct in holding that this is on account of the fact that the new service has got its own pay and seniority structure etc. It further held that while being on deputation, the separate identity of the employee on deputation is retained and even though rendering service to the host organization, a deputationist does not compete with the permanent employees of the host organization for any of the benefits. This is absolutely necessary because if the deputationists were to carry their past service into the new organization at par, it would totally upset the pay structure, recruitment pattern etc. of the host organization and they would end up higher vis-a-vis the direct recruits. Therefore, it has been deemed necessary to make this provision so that balance is maintained in respect of the persons joining the organization on a permanent basis and merging their identities with a new entity.

The Tribunal also held that in terms of para 4 of the OM, the provision was made so that the cases of extreme hardship could be taken up and ameliorated. Much emphasis was laid by learned counsel for the petitioner on this para of the OM which as per the counsel protects the basic pay of the petitioner on his permanent absorption also. Para 4 clearly refers to the past cases decided in terms of Ministry''s letter No. 7/43/62-P.III dated 24.7.62 as amended from time to time and modified with effect from 1.1.1973, will not normally be re-opened and it has further been clarified by saying that individual cases of hardship where an officer is likely to suffer in pensionary benefits as a result of the fall in basic pay on permanent absorption, will be taken up with the pay unit of the Department of Personnel/Ministry of Finance for consideration on merits so as to avoid any loss to the individual in the grant of pensionary benefits. We fail to comprehend as to how the case of the petitioner fall under para 4 of the said OM as the said para caters to past cases decided in terms of Ministry''s letter dated 7/43/62-P.III dated 24.7.62 as amended from time to time and modified w.e.f. 1.1.1973.

10. In so far as the contention raised by learned counsel for the petitioner that the OM Dated 18.6.2001 will govern the case of the petitioner, here again we find ourselves in complete agreement with the reasoning given by the learned Tribunal that this OM is more concerned with implementation of the 5th Central Pay Commission and the fixation of pay of a deputationist on his absorption is governed by the OM of 19.7.1983. The petitioner herein has also given an undertaking at the time of his absorption and the said undertaking is in consonance with the said OM dated 19.7.1983 and since the undertaking is not in contravention of any of the policy guidelines of the said OM dated 19.7.1983, we cannot appreciate the argument of learned counsel for the petitioner that the said undertaking given by the petitioner is against the law of the land.

11. On the applicability of the decision of the Apex Court in the case of K. Gopinathan vs. Union of India, (Supra), the Tribunal is correct in observing that in the facts of the said case, there was no such subordinate legislation in the shape of OM dated 19.07.1983 and the issue therein was decided in the facts of its own case, while in the facts of the present case, the case of the petitioner is governed by the subordinate legislation which prescribes the way the fixation is to be done.

12. In the light of the aforesaid discussion, we find no merit in the present petition and no ground to interfere with the reasoning arrived at by the learned Tribunal. Accordingly, the writ petition filed by the petitioner is dismissed and the order passed by learned Central Administrative Tribunal is upheld.

13. No costs.

