
(2019) 01 DEL CK 0319

In the Delhi High Court

Case No : Letter Patent Appeal No. 300 Of 2017

Sanjay Behari & Ors

APPELLANT

Vs

IFCI

RESPONDENT

Date of Decision : 17-01-2019

Acts Referred:

Citation : (2019) 257 DLT 181 : (2019) 8 AD(Delhi) 703

Hon'ble Judges : S.Muralidhar, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : D.R. Nigam, PBA Srinivasan

Final Decision : Allowed

Judgement

Sanjeev Narula, J

CM No. 15359/2017

1. The application for filing additional documents is allowed for the grounds stated therein.

LPA 300/2017

2. The Appellants who retired under Voluntary Retirement Scheme, 2008 have filed the present appeal under Clause 10 the Letters Patent Appeal challenging the judgment dated 20th February, 2017 passed by the learned Single Judge in W.P.(C) No. 1552/2017 dismissing their writ petition and consequently denying them enhanced pension and the other consequential benefits being commensurate with RBI pay scales.

Factual Background

3. The Appellants joined Industrial Finance Corporation of India (IFCI), a statutory Corporation that adheres to Reserve Bank of India (RBI) pay scales. In 1993, IFCI notified pension scheme for its employees under the Industrial Finance Corporation of India Ltd. Pension Regulations, 1993.

4. Voluntary Retirement Schemes have been introduced by IFCI from time to time. On 1st February, 2008, IFCI introduced the Voluntary Retirement Scheme 2008 (hereinafter referred to as 'VRS 2008'). Under this Scheme, on acceptance of the application of the eligible employees, they were entitled to several benefits including pension, under Pension Regulations, 1993 provided in Para 7 of the Scheme. The present Appellants applied under the aforesaid scheme and were relieved from duty on 25th February, 2008. At the time, the Appellants and all other employees of IFCI were in RBI pay scales (revised upto 1st November, 2002) and accordingly from March 2008, IFCI commenced payment of pension to the Appellants commensurate to said RBI pay scales. All other retirement dues such as Gratuity and Leave Encashment were also paid likewise.

5. In August 2008, IFCI introduced a Cost to Company pay structure (hereinafter referred to as "CTC"). All the existing employees were given an option to continue being governed by the RBI pay scales or opt for the more lucrative CTC structure. All of them, except one, opted for CTC.

6. On 23rd September 2011, IFCI implemented revision in RBI pay scales w.e.f. 1st November, 2007, for the officer who continued on the RBI pay scale. She was also given arrears of pay consequent to the pay revision.

7. On 13th July 2013, IFCI again modified its pay structure and decided to follow RBI structure in the matter of pay scale (revised w.e.f. 1st November, 2007) of rest of the serving employees of IFCI.

8. In July 2014, the Appellants became aware of the implementation of the revised RBI pay scales and accordingly wrote to CEO and MD, IFCI, requesting that benefit of pay revision should also be granted to them in respect of their pensionary benefits. In response thereto, IFCI vide letter dated 28th July, 2014 stated that there was no pay revision in IFCI w.e.f. 1st November, 2007 and additionally relied upon Paras 9.4 and 9.12 of VRS 2008 to deny the Appellants the benefit of the pay revision. Thereafter Appellants made representations to the Board of Director of IFCI, the same were rejected on the ground that IFCI had opted a Cost to Company structure of pay and allowances from August 2008 to October 2013 and that IFCI had not changed the pay scale during the aforesaid period. The Appellants agitated their grievances by making further representations to the Government Director of IFCI and Joint Secretary, DoFS, however the same were also rejected. Aggrieved with the decision of IFCI, denying them the benefit of pay revision, Appellants filed W.P.(C) No. 1552/2017, which has been dismissed by the impugned judgment dated 20th February, 2017.

9. Dissatisfied with the decision of the learned Single Judge, Appellants have filed the present appeal.

Findings of the learned Single Judge

10. The learned Single Judge dismissed the writ petition, essentially relying upon the ratio of the judgment in the case of A.K. Bindal v. Union of India, reported at

2003 SCC (L&S) 620. The learned Single Judge held that once an employee takes retirement under a VRS, he receives a golden handshake and such an employee cannot afterwards claim additional service benefits from the employer on account of his past services rendered for the employer. The learned Single Judge also rejected the Appellants submission qua the applicability of the judgment in the case of D.S. Nakara v. Union of India, reported at (1983) 1 SCC 305 on the ground that the same does not deal with the issue of claim of higher pension by the employees who had retired under a VRS after receiving lumpsum.

Proceedings during the pendency of the appeal

11. On 19th September 2018, during the course of hearing, the Appellants referred to the office order dated 4th January, 2001 wherein certain clarifications were issued by IFCI relating to an earlier voluntary retirement scheme- VRS 2000-2001. It was submitted that this clarification was not brought to the notice of the learned Single Judge and this notification was not considered by the Supreme Court in the case of A.K. Bindal (supra). It was further submitted that the IFCI had revised pay scale with retrospective effect from 1st November, 2007, when the Appellants were in employment. On the other hand, IFCI submitted that no benefit had accrued to any of its employee w.e.f. 1st November, 2007 and the revision in pay scale was given to its existing employees in the year 2013, except for one employee who had opted to remain on RBI pay scales instead of CTC structure.

12. Noting these submissions, the following order was passed on 19th September 2018:

"The petitioners have availed benefit of 2008 Voluntary Retirement Scheme. The petitioners were granted VRS on 25.02.2008. Strong reliance is placed on a clarification issued by the respondent (with findings placed on page 333 of the paper book), as per which the officers who opt for the VRS scheme would be entitled to receive benefit of revision in pay scale.

Counsel for the petitioners submits that this clarification was neither brought to the notice of the learned Single Judge nor this notification was considered by the Apex Court in the case of "A.K. Bindal and Anr. vs UOI and others" reported in 2003 SCC (L&S) 620.

Counsel further contends that the revision of pay scale has retrospective effect from 01.11.2007 and during this period, the petitioners were in employment.

Learned counsel for the respondent however, submits that in view of the decision of the Supreme Court in the case of "A.K. Bindal and Anr. vs UOI and others", no benefit can accrue in favour of the petitioners as the petitioners have taken benefit of a lumpsum payment and received a golden handshake while availing benefits of 2008 VRS Scheme.

While learned counsel for the respondent submits that no benefit has accrued to any of the employees w.e.f. 01.11.2007, and has further clarified that the

respondent has given revision of pay scale in the year 2013 except to one of the employees who had opted for the RBI scheme and not for the CTC structure. Counsel for the petitioners however submits that the benefit was not accepted by the employees because they opted for the CTC structure and apprehend that the revision would have worked to their detriment.

Counsel for the respondent wishes to seek instructions with respect to the applicability of the revision of pay scales from 01.11.2007 or 2013."

13. On 25th October 2018, further submissions were noted; It was recorded that IFCI was prepared to implement the revised pay scales w.e.f. 2013. The Appellants contended that IFCI's approach is discriminatory as one of the employee was getting revised pay (as per the RBI pay scales) w.e.f. 1st November, 2007. Noting the contentions, Respondents were directed to file an affidavit putting their stand on record. The order dated 25th October 2018 reads as under :

"1. The case of the Appellants is that the earlier round of litigation regarding ? performance link incentives" culminated in the decision of the Supreme Court in A.K. Bindal v. Union of India 2003 SCC (LLS) 620 and, therefore that decision cannot apply in the present case, which concerns the pension payable to the Appellants and other similarly situated persons who were granted voluntary retirement with effect from 25th February, 2008.

2. Mr. Nigam, learned counsel for the Appellants, points out that in the case of one employee who had opted for the RBI Scheme, the benefit of the revised pay-scale with effect from 1st November, 2007 was made available retrospectively, whereas in the case of the Appellants, the Respondents are prepared to implement the revised pay scales, upon option to the CTC structure, only with effect from 2013. This according to the Appellants is discriminatory. It is further pointed out that the revised pay scales have in LPA 300/2017 Page 2 of 2 fact been implemented for serving employees from 1st November, 2007 itself.

3. Learned counsel for the Respondent contests the above assertion. He states that he will file prior to the next date an affidavit along with the relevant documents to show that the revised pay scales even for serving employees was made available only from November, 2013 and not earlier. The Appellants are permitted to file a further reply to the said affidavit before the next date."

14. The aforesaid order inadvertently refers to the judgment in the case of A.K. Bindal (Supra). In fact, the question of performance linked incentives in respect of VRS 2008 was decided by the supreme court in P.P. Vadiya v. IFCI Ltd. (SLP No. 15453/2015).

15. Pursuant to the aforementioned order, IFCI filed an affidavit and inter-alia averred as under:

"1. That I am working as Deputy General Manager for the Respondent organization and as such competent to swear this Affidavit.

2. That on the last date of hearing, i.e. on 19.09.2018, the Counsel for the Respondent sought time for inspection with respect to the applicability of the revision of the pay scales from 01.11.2007 or 2013. Hence, this Affidavit.

3. That the Respondent had adopted the pay scales of RBI, existing then, in November 2013 only with prospective effect. This is borne out of the fact that in the HR Circular 7/2013 dated September 13, 2013, the notification was only for introduction of Pay Scales on the pattern of Reserve Bank of India and no reference was made to the earlier scales that existed prior to 2008.

4. That at the time of switch over from earlier payscales of the period prior to August, 2008 to Cost to Company (CTC) structure, IFCI was not a Government Company. For arriving at CTC of employees, job evaluation of the various roles was done by a Consultant and scores for various roles were arrived at based on various parameters defining criticality of roles. Based on these scores, the jobs were clubbed in different job bands and compensation under CTC structure fixed and employees were migrated to the CTC structure. In case of one employee, who is also visually impaired, the earlier structure of RBI pattern was continued. It may have been insensitive on the part of IFCI to apply uniform standards of job evaluation in case of a person with disability (visually impaired).

5. That it is further confirmed that as a result of the adoption of pay scales in November, 2013, no arrears were ever paid to the Respondent's employees during the period from 2008 to 2013. Except to one visually impaired employee who did not opt for CTC structure.

6. That the employees of the Respondent have drawn the pay scales as applicable to them under CTC structure and not as per RBI's pay scales till November 2013. The pay slips of some of the employees of the Respondent to bring the evidence that the; of the Respondent were drawing only the payscales of CTC structure till November 2013 and post November 2013, the employees of the Respondent have been drawing the pay scales of RBI existing there at that point of time. The said pay scales showing both, i.e. the CTC structure (prior to November 2013) and pay scales (post November 2013) are enclosed herewith as Annexure-RI (Colly.).

7. That it is submitted that the Memorandum No. HR12/2013-14 (Annexure-B5 of the LPA NO. 300 OF 2017) at Para 4.3 only specifies the methodology for fixation of pay scales and it is no way suggesting that pay scales have been implemented / revised in the year 2008. The stated methodology was adopted only in respect of the employees whose pay was to be fixed on RBI pay scales (from CTC structure) as on November 1, 2013 and no other employee. Further, this methodology was followed only for the purpose of calculation/fixation of the pay scale but not for any other purpose.

8. That each VRS scheme is independent by itself and the Petitioners have taken the benefits of the scheme of 2008. Hence, no regulations of VRS 2000/2001 are applicable to the Petitioners."

Submissions

16. Learned counsel for the Appellants submitted that they had been illegally and arbitrarily denied benefits of pay revision, despite being on the rolls of IFCI on the cut off date for the implementation of revised pay scale i.e. 1st November, 2007. Learned counsel further submitted that, the Appellants were being paid pension on the basis of the RBI pay scales revised upto 1st November, 2002 and implementation of the revised RBI pay scales of 1st November 2007, would give them 25-30% enhanced pensionary benefits. It was further submitted that IFCI's approach was discriminatory and arbitrary inasmuch as it extended the benefit of regular revision of pay scales along with arrears to one of its existing official who had opted to continue on RBI pay scales in 2008, when other employees had opted for CTC structure.

17. Learned counsel for the Respondent, on the other hand, urged that revised RBI pay scales of 2007 were implemented with prospective effect, which was evident from the circular dated 13th September, 2013 whereby revised pay scales on the pattern of RBI were introduced for IFCI's existing employees. He further submitted that at the time of switch over from the earlier pay scales in August 2008, IFCI was following CTC structure till October 2013 and its employees were on CTC pay structure. In case of one visually impaired employee, RBI pay scale was continued to be followed and therefore her case could not be considered as a precedent. However, none of the employees were given arrears after the adoption of the revised pay scales in November 2013.

Analysis and Findings

18. Having heard the learned counsel for the parties at length and in view of their submissions, the scope of the petition has been narrowed down to the issue of cut off date for the implementation of the revised pay scales. It is not in dispute that the Respondents are willing to implement the revised pay scales w.e.f 1st November, 2013. Appellants, however assert that they are entitled to revision in pay scale from 1st November, 2007 along with other consequential benefits.

19. IFCI seeks to legitimize the denial of the benefits of revision in the pension on the ground that RBI pay scales were discontinued and IFCI had migrated from RBI pay scale to CTC structure from August 2008 till November 2013. From the perusal of their counter affidavit it emerges that in August 2008, IFCI gave the option of CTC structure to its serving employees. It seems that for the employees who were at that point of time on RBI pay scales (revised upto 1st November 2002), CTC structure was a more lucrative option and for that reason, they switched over to the aforesaid structure. Admittedly, one of the employees did not opt for the CTC structure and continued to be governed by RBI pay scales.

20. From 2013 onwards, IFCI undoubtedly adopted pay scales prevailing in RBI for all the serving employees. The methodology adopted for implementation now required the re-fixation of their pay scale. The employees who were paid on RBI

pattern were continued on that pay scale (notionally) by giving annual increments till the date of reverting back to the pay scales i.e. till 2013. As per IFCI, such employees were not given any arrears for the period from 2008 till 2013 when RBI pay scales were introduced on 1st November 2013. Concededly, in September 2011 the benefits of RBI pay revision w.e.f. 1st November 2007 were indeed granted on regular basis along with arrears to the employee who did not opt for CTC structure. It is therefore evident that IFCI granted pay revision to its employees w.e.f. from 1st November 2007, though the pay revision is stated to be on notional basis. The question therefore arises that in case some employees were not given arrears, would it in any manner deprive the present Appellants from claiming arrears? The issue of payment of arrears to the serving employees from August 2008 - November 2013 did not arise because such employees, were on a more lucrative pay structure (CTC) that entitled them to receive higher emoluments than the RBI pay scales. This is evident from the following table:-

Bands

Average

Average

Total

Total

Avg %

Of 2008

of 2012-

Increment

Increment

Inc

(RBI/IDBI

13 (INR)

amt. From

(%)

from

(Year on

Scales)

2008to

2008
to
Year)
(INR)
2013
2013
(considering
base
salaries
of
2008)
Exec
956,739
4,861,225
3,904,486
408%
41%
Dir/WTD
CGM
960,444
3,634,653
2,674,209
278%
33%
GM/VP
680,066
2,564,912
1,884,846
277%
32%

SAVP/DGM

644,297

1,877,926

1,233,629

191%

25%

AVP/AGM

602,717

1,577,200

974,483

162%

22%

Manager

601,555

1,190,346

588,791

98%

15%

Asst

426,486

705,324

278,838

65%

11%

Manager

Spl Asst

300,027

533,000

232,973

78%

12%

21. Therefore, there was no question for payment of arrears to employees who continued on CTC structure. The above circumstance therefore cannot be cited as a ground to deny the Appellants benefits of the pay revision and the arrears w.e.f 1st November, 2007. It is also to be noted that VRS 2008 itself entitles the pensioners to benefits as per IFCI Pension Regulations, which is a separate and independent statutory Regulation, distinct from voluntary retirement scheme. Merely because Appellants' claim to pension is on account of voluntary retirement it does not mean that ipso facto they would be disentitled to revision in pensionary benefits, especially considering that the VRS 2008 itself refers to payment of pension as per Pension Regulations, 1993. The RBI pay scales were revised w.e.f. 1st November, 2007, the date on which the Appellants were still in service. Since the Appellants were entitled to revision of pay on the date of their retirement, the pension in terms of the Pension Regulations would thus also require to be enhanced on the basis of revised RBI pay scale (w.e.f. 1st November, 2007). Thus, pension of the Appellants would have to be worked out on the basis of the revision in the pay scale in terms of Para 7 of the VRS 2008 which reads as under:-

"7. BENEFITS UNDER THE SCHEME An Employee whose application for voluntary retirement is accepted shall be entitled to the following:-

7.1 The balance in Provident Fund Account of the employee payable as per the IFCI Employees Provident Fund regulations.

7.2 (i) Pension as per the IFCI Pension Regulations to those employees who have already opted for pension.

(ii) Pension as per the IFCI Pension Regulations to employees (in case they are not pension optees) who opt for VRS and seek pensionary benefits in lieu of contributory Provident Fund.

7.3 Payment of lumpsum amount equivalent to Pay plus allowances for the unavailed Ordinary Leave, as on the date of relieving on voluntary retirement, subject to a maximum of ten months, as per rules of the IFCI.

7.4 Gratuity as admissible under the Rules of the IFCI.

7.5 Voluntary retirement amount equivalent to two months' salary for each completed year of service rendered or the monthly salary at the time of relieving on voluntary retirement multiplied by the balance complete calendar months or service left or Rs. 15 lakhs whichever is less. Service rendered by an employee prior to joining the service of the IFCI shall not be reckoned for the purpose of calculating the voluntary retirement amount (Fraction of service of six months and above will be reckoned as one year and fraction of service of less than six months will be ignored for the purpose of calculating years of service rendered in IFCI).

7.6 Retirement Fare Concession on the same basis as applicable on normal retirement.

7.7 No other benefit, including the post retirement medical benefits under the Voluntary Welfare Scheme and Medical Scheme of the IFCI shall be available to the employee opting for Voluntary Retirement under the Scheme. The total amount, without interest, contributed by an employee under IFCI Voluntary Welfare Scheme shall be refunded to him."

22. In our view, there is no legal impediment to deny the Appellants the revision in their pension, commensurate with the revised RBI pay scales w.e.f. 1st November, 2007. The judgment of the Supreme Court in A.K. Bindal (supra), would not come in the way of the Appellants to seek relief of enhancement of pensionary benefits. In A.K. Bindal (supra) the Court was considering the question in respect of claim of additional benefits over and above those that were offered in the VRS, as is evident from the following para of the said judgment:

"34. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as "golden handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."

23. In contrast, the case of the Appellants is for correction of the payment of their existing terminal benefits of pension. Appellants are not seeking any additional benefits in the VRS. We further observe that the learned Single Judge has not considered the decision of D.S. Nakara (supra) in its proper perspective. No doubt in D.S. Nakara (supra) petitioners therein were not covered by any VRS scheme and were not staking claim of higher pension but the ratio decidendi of the said judgment is applicable to the case in hand. The Supreme Court in the D.S. Nakara has held that the terminal benefits in pension are the payment for the past services rendered and they are subject to implementation of retrospective pay revision as the revised pay had already been approved on the date of retirement of the Appellants in that case. It would, at this stage, be apt to refer to the following para from the said judgment:

"46. Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into consideration. Recall at this stage the method adopted when pay scales are revised. Revised pay scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the court by its approach would be making the scheme retroactive, because it is implicit in theory of wages."

24. We also note that, Rajya Sabha Committee on a Petition filed by retirees of an earlier scheme- VRS 2003-04 seeking similar relief had passed the following remarks :

"3.1. One of the terms and conditions of VRS of 2001 (HR Circular No.31/2000, dt. 13 December, 2000) contained the following clause:-

"The benefits payable under this Scheme shall be in full and final settlement of all claims of whatsoever nature, whether arising under the scheme or otherwise to the Officers (or to his nominee in case of death). An Officer who voluntarily retired under this scheme will not have any claim against the IFCI of whatsoever nature and no demand or dispute will be raised by him or on his behalf whether for re-employment or compensation or back wages".

The IFCI Ltd. through its subsequent Official Order HR No.7/2001, dt. 4th January, 2001, clarified as under:-

"In regard to para 8.7 of the Scheme, it is clarified that the Officers, opting for voluntary retirement under the above Scheme, will be entitled to receive the benefit of revision in pay scales in respect of arrears of pay and allowances, gratuity, leave encashment, pension/Provident Fund, pursuant to pay revision. However, there will be no change in the voluntary retirement amount, in terms of para 7.5 of the Scheme".

The petitioners took retirement under VRS of 2003-04 knowing fully, well that their pay scale revision was also due from 1st November, 2002. The terms and conditions of VRS 2003-04 (Clause 9.4) were similar to clause 8.7 of VRS of 2000-01. They took VRS with the presumption of getting benefit of pay revision for the purpose of pensionary benefit following a clarification issued by IFCI Ltd. to clause 8.7 of VRS of 2000-01 as VRS optees of 2000-01 also got the benefit of pay revision in spite of weak financial health of the IFCI Ltd. The petitioners alleged that the cut-off dates of pay revision were arbitrarily fixed to deny the benefit of pay revision to VRS optees of 2003-04.

5.15. In view of foregoing, the Committee recommends that the Ministry of Finance may impress upon the IFCI Ltd. through its nominees in its Board of Directors, to implement the revision of pay scale and pensionary benefits w.e.f. 1st November 2002 in favour of retired employees including VRS optees who were in the pay roll of IFCI Ltd. as on 1st November, 2002 but who ceased to be in service thereafter on account of death, retirement on account of superannuation or VRS of 2003-04"

25. There is no doubt that retrospective increase in salary is given to those who are still in service at that relevant time or who had retired in normal circumstances. However the Appellants in the present case would have the benefit of additional pension on account of the fact that Respondents have revised the salary with retrospective effect and also extended benefit of such pay revision for the retirees of the earlier VRS 2000-01. In view of the above discussion we hold that on the date of Appellants' retirement i.e. 25th February 2008, they were entitled to retrospective pay revision w.e.f. 1st November, 2007. Accordingly, we issue a mandamus to the IFCI to revise the pension of the Appellants w.e.f. 1st November, 2007. The orders fixing the revised pension in terms of the present judgment be issued within four weeks. As a consequence of the above, the arrears be paid to the Petitioners within a period of 12 weeks from today. The impugned judgment is set aside and the appeal is accordingly allowed in the above terms. No orders as to costs.